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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~985~~. 622

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF IN ERROR,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED OCTOBER 3, 1884.

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a *Transcript on Writ of Error.*

In the Circuit Court of the United States for the District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant. } No. 2846.

1 *Complaint.*

In the Superior Court of the County of Fresno, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiffs,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant.

Plaintiff avers that the defendant, a corporation duly incorporated under the laws of the State of California, is indebted to plaintiff in the sum of $5,029.37, State and county taxes for the fiscal year 1881, with five per cent. added for the non-payment of such taxes and 50 cents costs of collection to date.

Plaintiff demands judgment for said several sums, and prays that an attachment may issue in form as prescribed in section five hundred and forty of the code of civil procedure.

2 E. HALL,
Tax Collector of Fresno County.
D. S. & S. L. TERRY,
Attorneys for said Tax Collector.

Endorsed: No. 375. Superior court, Fresno county. The People of the State of California *vs.* The Southern Pacific Railroad Company. Complaint. Filed 22d April, 1882. A. M. Clark, clerk.

Return of Summons.

3 OFFICE OF THE SHERIFF OF THE CITY AND COUNTY OF SAN FRANCISCO.

I hereby certify that I received the annexed summons on the 26th day of April, A. D. 1882, and personally served the same on the 28th day of April, A. D. 1882, upon The Southern Pacific Railroad Company, a corporation, the therein-named defendant, by delivering to J. L. Willcutt, secretary of said defendant, personally in the city and county of San Francisco, a copy of said summons attached to a copy of the complaint in said action therein named.

Dated at San Francisco, this 28th day of April, 1882.

JOHN SEDGWICK, *Sheriff,*
By W. T. HAVELEY, *Deputy Sheriff.*

Fees, $1.75.

4 *Summons.*

In the Superior Court of the County of Fresno, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant.

Action brought in the superior court in and for the county of Fresno, State of California, and the complaint filed in the office of the clerk of said county.

The people of the State of California send greeting to The Southern Pacific Railroad Company, Defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the superior court in and for the county of Fresno, State of California, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within
5 this county, or, if served elsewhere, within thirty days.

The said action is brought to recover of you the sum of five thousand and twenty-nine and $\frac{37}{100}$ ($5,029.37) dollars State and county taxes for the fiscal year 1881, with five per cent. added for the non-payment of such taxes and 50 cents costs of collection to date.

And you are hereby notified that if you fail to appear and answer the said complaint, as above required, the said plaintiff will cause your default to be entered and take judgment against you for said sum of $5,029.37, together with five per cent. added and fifty cents costs as aforesaid.

Given under my hand and the seal of the superior court in and for the county of Fresno, State of California, this 22d day of April, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] A. M. CLARK, *Clerk.*

Endorsed: Filed 1st May, 1882. A. M. Clark, clerk, by J. H. Daly, deputy clerk.

6 *Answer.*

In the Superior Court of the County of Fresno, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant. } No. 375.

Now comes the defendant, and answering the complaint of plaintiff herein—

I.

Denies each and every allegation in said complaint had, made, or contained, denies that the defendant is or at any time within five years last past has been a corporation existing under the laws of the State of California, or otherwise than as hereinafter set out. Denies that the defendant now is, or ever was, indebted to plaintiff

in any sum whatever for State or county taxes, percentage, costs of collection, or otherwise. Denies that any taxes were levied or assessed against defendants or upon any of its property under its control, or in its possession for the fiscal year 1881.

Defendant refers to and makes part of this subdivision the matters and things stated in subdivisions two to thirty-seven, inclusive, of this answer.

7 And for further and separate answer defendant avers:

II.

Defendant a corporation—Its place of business—Line of road—Stockholders.

That it is a corporation existing under the laws of the United States and of the State of California (as will hereafter more fully appear). That the principal place of business of defendant now is, and for many years last past has been, in the city of San Francisco, State of California. That a great number of its stockholders now are, and ever have been, citizens of the United States and residents of said State of California, while other of its stockholders now are, and ever have been, citizens of the United States and residents of States other than the State of California.

III.

S. P. R. R.—The use and purposes thereof.

That as such corporation it constructed a line of railroad, and procuring the rolling-stock and all appurtenances thereunto belonging, known and designated as the Southern Pacific railroad (of California), and described as follows: Commencing on the waters of the Pacific Ocean, in the city and county of San Francisco, and extending in a southerly direction through portions of the county of San Francisco, and through the county of Santa Clara to Tres Pinos, in the county of San Benito, with a branch therefrom running from Carnadero, in the county of Santa Clara, to Soledad, in the county of Monterey; that said line of railroad also extends from Huron, in Fresno county, to Goshen, in Tulare county, and thence in a southerly direction, by way of Tehachapi Pass, Mojave, and Los Angeles, to the Colorado river at Fort Yuma, with three branches from said line at Los Angeles, extending respectively to Santa Monica, Wilmington, and Santa Ana, in the county of Los Angeles. That said line of railroad is connected with the Texas & Pacific railroad at El Paso, in the State of Texas, by two railroads, to wit, the Southern Pacific railroad (of Arizona), extending from Fort Yuma to the eastern boundary line of Arizona; and the Southern Pacific railroad (of New Mexico), extending from said eastern boundary line across New Mexico to El Paso. That said several railroads are operated as one continuous line from a point near Marshall, in Texas, to the Pacific Ocean at San Francisco, for the uses and purposes and in the manner contemplated by the acts of Congress hereinafter referred to.

That from Tres Pinos to Huron the said Southern Pacific railroad has not been completed, but, pending its construction, connection between said points is made over the lines of the Central Pacific railroad. That defendant has not completed the construction of the road from said Southern Pacific railroad to the Colorado river to connect with the Atlantic & Pacific railroad, hereinafter referred to, but has the construction thereof under contract, and will soon have completed a road from Mojave, on the line of said Southern Pacific railroad to the Colorado river, there to connect with said Atlantic & Pacific, and with the said Atlantic and Pacific, when completed, making a continuous line from Springfield, in the State of Missouri, to the Pacific Ocean, as contemplated by the act of Congress, hereinafter referred to, chartering the Atlantic and Pacific Railroad Company.

IV.

Length of the road in the several counties.

That of said Southern Pacific railroad (of California) there had been, prior to the first Monday in March, 1880, completed, and there was in operation in the several counties through which it runs, 706.18 miles, to wit: In the city and county of San Francisco, 7.3 miles; in the county of San Mateo, 21.10 miles; in the county of Santa Clara, 59.30 miles; in the county of Santa Cruz, 2.15 miles; in the county of San Benito, 17.65 miles; in the county of Monterey, 49.28 miles; in the county of Fresno, 17.93 miles; in the county of Tulare, 61.98 miles; in the county of Kern, 117.83 miles; in the county of Los Angeles, 139.48 miles; in the county of San Bernardino, 54.60 miles, and in the county of San Diego, 158.85 miles, and all within the State of California.

V.

Act of Congress of July 27th, 1866—Atlantic and Pacific act.

That on the 27th day of July, 1866, the Government of the United States undertook to construct, or cause to be constructed, a line of railroad from a point at or near the town of Springfield, in the State of Missouri, to the head waters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude, as near as might be found suitable for a railroad route, to the Colorado river, at such point as might be selected, and thence by the most practicable and eligible route to the Pacific Ocean; and to that end Congress passed
8 an act, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," which act was approved on said 27th day of July, 1866, and to which act defendant here refers by title and makes it part of this answer. (See United States Statutes at Large, vol. 14, page 292.) That by said act certain persons therein named were made and erected into a corporation, under the name and style of the "Atlantic & Pacific Railroad Company."

VI.

Intent of Congress in passing act of 1866.

That the intent and purpose of Congress in passing said act was to secure the completion of a railroad from the Missouri river to the Pacific Ocean, with a branch to San Francisco, and to secure the use thereof for all time to come to the Government of the United States for the transportation of its mails, troops, munitions of war, and public stores.

VII.

Like privileges and immunites granted to defendant.

That to facilitate the construction of said road, the Government of the United States, by said act of Congress, adopted the defendant as the instrument or agent of the United States to carry out the purposes aforesaid, and conferred upon defendant the same powers, and clothed defendant with the same privileges and immunities, which it conferred upon and clothed the Atlantic & Pacific Railroad Company with, except that the said defendant was to construct that portion of said railroad between the Colorado river and the city and county of San Francisco.

VIII.

Acceptance of the conditions.

That the said Atlantic & Pacific Railroad Company did organize under said act, and did obtain *bona fide* subscriptions to the stock of said company to the amount of one million dollars, with ten per centum paid within two years after the passage and approval of said act of Congress; and the said company and plaintiff did immediately after the passage of said act accept the terms and conditions thereof, and that said company and defendant have duly complied therewith.

IX.

Roads constructed under said act.

That the said company has nearly completed, and will, within a short time, have fully completed the whole of said road from Springfield to the Colorado river; and defendant has constructed said road as aforesaid to Mojave, with the exception hereinbefore set out, and is prosecuting the construction thereof from said Mojave to a junction with the road of the Atlantic & Pacific Company at the Colorado river; and that the whole of said road will be completed and in operation within the present year.

X.

Act of Congress of March 3d, 1871—Texas Pacific act.

That on the 3d day of March, 1871, the Government of the United States undertook to construct, or cause to be constructed, a line of railroad from Marshall, in the State of Texas, to San Diego, in the State of California, and from said line of road at the Colorado river

to construct, or cause to be constructed, a line of railroad which would connect the road from Marshall to San Diego with the line of road provided for in the act of Congress of July 27th, 1866, hereinbefore referred to, and by means of said connecting road to connect the road from Marshall to San Diego with the city of San Francisco; and to that end Congress passed an act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March 3d, 1870, and subsequently, on the second day of May, 1872, passed an act entitled "An act supplementary to an act entitled An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March 3d, 1871. To which acts defendant here refers by title, and makes them part of this answer. (See vol. 16, U. S. Statutes at Large, 573; vol. 17, *Id.*, 59.)

9 XI.

Provisions of said acts accepted by the Texas Pacific Railroad Company and by defendant—their work thereunder.

That immediately after the passage of said act of March, 1871, the Texas Pacific Railroad Company was organized in pursuance thereof, and it and defendant accepted all the terms and conditions of each of said acts of 1871 and 1872, and have fully and in every respect complied therewith, and under them and in compliance with the spirit and intent of said acts have completed the roads mentioned in the third subdivision of this complaint.

XII.

Intent of Congress in passing the acts of 1871 and 1872.

That the declared purpose of Congress in passing said acts was to insure the transportation of the mails, troops, munitions of war, supplies, and stores of the United States, and that Congress expressly declared in said acts that no act of the companies, or either of them, nor any law of any State or Territory, should ever impede, delay, or prevent the companies mentioned from performing their obligations to the United States in that regard.

XIII.

Indebtedness of defendant secured by mortgage.

That prior to the 1st day of January, 1881, the defendant was indebted to divers persons, citizens of the United States, and many of them then and now citizens and residents of the State of California, in large sums of moneys advanced to construct and equip the railroad hereinbefore described. That to secure the payment of such indebtedness the said company long prior to the said first day of January, 1881, executed and delivered a mortgage upon said Southern Pacific railroad, and all rolling-stock and appurtenances; that said indebtedness exceeded and still exceeds three thousand dollars per

mile of said road; that no part thereof has ever been paid, except the accruing interest, and that the whole thereof is now, and since the execution of said mortgage has been, a valid and subsisting indebtedness against said company, and has been and still is secured by said mortgage.

XIV.

Assessment by State Board of Equalization.

That on the 2d day of May, 1880, the State Board of Equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section 10 of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad against defendant. That said pretended assessment was made separately upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad, and was then and there so entered upon the minutes of said board. And that said assessment is the assessment upon which the several taxes mentioned in the complaint herein are based; and that no other assessment than the aforesaid was ever made of said property, or any part thereof, for said fiscal year.

XV.

Failure of State board to transmit assessment.

That the State Board of Equalization never did at any time transmit said pretended assessment or any assessment of said property, or any part thereof, to the assessor, or to any of the authorities of said county, and never at any time caused the same to be entered upon the assessment roll of said county for said fiscal year, or for any other year, nor has said pretended assessment, or any part thereof, or any assessment against said defendant or said property, or any part thereof, ever been entered upon or made part of any assessment roll, book, or delinquent list, in or for said county.

XVI.

State board never apportioned assessment.

Defendant avers, upon its information and belief, that neither said pretended assessment nor any assessment against defendant in respect to said property, or any part thereof, was ever entered upon any assessment roll or book of said county of Fresno, nor upon any delinquent list of said county, nor was any entry relative to the action of the said State Board of Equalization in respect to the assessment or apportionment of said property, or any part thereof, ever entered upon said assessment roll or book, except a letter from the State Board of Equalization, addressed to the assessor of said county, and that said letter did not contain said assessment or any part thereof, nor a copy of said assessment or any part thereof, nor did it contain any apportionment thereof, as provided for in sec-

tion 10 of article XIII of the constitution of the State of California, hereinbefore referred to, or otherwise.

XVII.

No assessment was ever made or entered on the assessment roll.

Defendant, upon information and belief, avers that neither said pretended assessment, nor any assessment against this defendant, or any other person or persons, in respect to the said property, or any part thereof, was ever entered upon any assessment roll or book of said county of Fresno, nor upon any delinquent list of said county; nor was any entry relative to the action of the said State Board of Equalization in respect to the assessment or apportionment of said property of defendant, or any part thereof, ever entered upon said assessment roll or book, except the said letter of the said State Board of Equalization. That said letter was copied by the assessor of Fresno county on or about the 1st day of June, 1881, upon the assessment. That upon said assessment roll opposite said letter is entered in figures $295,845.00, and opposite said figures, under the head of taxes due, is entered in figures $5,029.37. That the same entries, and no others, appear upon the delinquent list of said county for said fiscal year. That, as defendant is informed and believes, and upon such information and belief charges the truth and fact to be, there are in respect to the said property, and in respect to petitioner, no other or further entries upon any assessment roll, book, or delinquent list of said county.

XVIII.

State board pretended to assess the whole of said property to defendant.

That the State Board of Equalization, in making the said pretended assessment, pretended to assess to and against defendant the whole of said railroad, roadway, road-bed, rails, rolling-stock and franchises, and failed to deduct therefrom the value of the mortgages given and existing as aforesaid thereupon to secure the indebtedness of said company to the holders of said bonds.

XIX.

State board did not treat said mortgage as an interest in the property.

That in making said pretended assessment the said State Board of Equalization did not deem or treat said mortgages as an interest in said property, but did assess the whole of said property to the defendant in the same manner it would have done had there been no mortgage thereon.

XX.

Pretended assessment and apportionment made before any other assessments in the State.

That the time the said pretended assessment was made and said

pretended apportionment was made by the State Board of Equalization no assessment book or roll for the said fiscal year had been completed or was in existence, nor had a single assessment or valuation for the purposes of taxation for said fiscal year been ascertained or fixed as provided by law or otherwise, and that said board, in making said valuation and apportionment, neither did nor could exercise any of the powers relative to the equalization of values for the purposes of taxation.

XXI.

Authority exercised by State board violates provisions of Fourteenth Amendment.

That under the constitution of the State of California the board of supervisors of the several counties of the State constitute boards of equalization for their respective counties, whose duty it is to equalize the valuation of the taxable property in the county, except the franchise, roadway, road-bed, rails, and rolling-stock of railroads operated in more than one county of the State; and that to such boards the owners of all property, except as above stated, have the right and privilege to apply for the correction of the assessed values of such property, and have the right and privilege of a
11 hearing before the said local boards of equalization. That by the provisions of the constitution of California, and the laws thereof, this right and privilege, or any right and privilege, to be heard in relation to the said assessment, is denied in respect to the property in question. All of which defendant avers is contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States.

XXII.

Further violation of Fourteenth Amendment.

That the said State Board of Equalization never at any time made or had any rule or regulation relative to the assessment or valuation of railway property of any kind, nor never made or had any rule to govern or regulate its proceedings for the exercise of the powers conferred upon it by section 10 of article XIII of the constitution of California.

XXIII.

Further discrimination.

That the power conferred upon the State Board of Equalization by section ten of article XIII of the constitution violates the provisions of said Fourteenth Amendment, for that said section, as to such powers, is self executing and complete, and does not provide for personal or other notice to be given to the parties to be affected by the exercise of such powers, and does not provide for a full or any opportunity of time, place, or tribunal for such parties to be heard in defense of their rights; and that from, under, and by said provision of the constitution of the State of California the liability of owners of such property to taxation, and the amount thereof, may be fixed without notice or an opportunity to be heard.

XXIV.

Further discrimination.

That the provisions of the constitution of the State of California providing for the assessment of railroad property operated in more than one county is in contravention of the provisions of said Fourteenth Amendment of the Constitution of the United States, in this, that it discriminates against the owners of railroad property operated in more than one county; in this, that whereas, under section four of said article XIII of the constitution of the State of California, if the owner of other kinds of real property have a mortgage, lien, or incumbrance thereon, he is not liable to assessment or taxation upon such property, nor for the value of his interest in such real estate over and above the value of such mortgage, lien, or incumbrance; whereas in case of railroad property no such allowance or deduction is made, had, or allowed with respect to any mortgage, lien, or incumbrance there may be upon such property.

XXV.

Further discrimination.

That all owners of railroad property, operated in more than one county, by virtue of the provisions of said section ten, of article XIII, which relate to the assessment by the State Board of Equalization of such property, are denied any protection from the laws of the State of California, which—

(*a.*) Require that property shall be taxed in proportion to its value.

(*b.*) Require such proportions to be ascertained by a general law.

(*c.*) Require that before liability be fixed an opportunity to be heard must be given.

(*d.*) Give an appeal from the assessor to boards of equalization.

(*e.*) Require the assessment to be made in the county, and prevent its being made in localities distant from the *situs* of the property.

(*f.*) Which prescribe mode and manner of the assessment.

(*g.*) Which allow deductions for indebtedness secured by mortgage.

And defendant avers that at and before and ever since the adoption of the constitution of California, now in force, there were and are existing under the laws of said State corporations of various kinds formed for the purpose of and actually operating and doing business, and holding and using and operating property in more than one county in said State, and that at all of said times there were and there now are divers natural persons, residents of said State, operating property in more than one county in said State, and that at all of said times there were and now are railroads owned by corporations formed under the general laws of said State which are only operated in one county. That by the provisions of section ten of article XIII of said State constitution persons operating railroads in more than one county in the State have been singled out from

all other persons operating property in more than one county and denied the right, common to all other persons, to appeal for relief from over valuations of their property by assessors to the local board of equalization and denied the rights and privileges accorded by the laws to all other persons in that respect.

12 XXVI.

System adopted by said board violates rules of equality.

That the State Board of Equalization in making said pretended assessment of the said roadway of defendant did willfully and designedly include in the valuation of said roadway the value of fences erected upon the land of coterminous proprietors; and did willfully and designedly value the said roadway at a greater value than the value of other property similarly situated, and greater than its actual value, upon the ground that such increased valuation should be made because the title of defendant thereto was acquired by condemnation.

That the value of such fences which were not the property of defendant nor the property of the owners of said roadway, and the increased value affixed to the roadway by the system adopted by the board, are blended in said pretended assessment, and that there is no mode or means by which such illegal valuations can be separated from those which may be legal.

Defendant, upon its information and belief, avers that the said State Board of Equalization adopted a system of valuation in respect to all the property mentioned and referred to in section 10 of article XIII of the Constitution, which defines the power of said board, which system was by said board intended to and which did operate unequally, and which was intended to and did violate the rule prescribed by said section—that all of such property should be assessed at its actual value. That the system so adopted was applied by the said board in making said pretended assessment of the said property, and in making the assessment of all property in the State over which the pretended authority of said board extended.

That said system was to include within the value of the roadway the value of the fences owned and possessed by coterminous proprietors, and to value said roadway at double its actual value, because the right thereto was acquired by condemnation. That said system relative to the rolling-stock of railroads was to value the same at sixty per cent. above its actual cost when new, and to value such rolling-stock at double its actual value. That said system, relative to the franchise, was to value it at $2,000 per mile, when the actual value, as the board well knew, of said franchise as an entirety did not exceed twenty-five dollars. That said system as to the valuation of other property to be assessed by the said board was to value it at double its actual value. That the said system was by the said board adopted and was by it applied in making all assessments made by it with the intent and purpose wrongfully and unlawfully to cause the persons and property assessed by it to pay double the rate of State

and county taxes paid by the owners of property assessed by the local authorities. And defendant avers, upon its information and belief, that the said board applied the said system in making the pretended assessment against the property upon which the taxes mentioned in the complaint are based. And defendant, upon its information and belief, avers that the said State Board of Equalization, in making said pretended assessment, did not value any of said property at its actual value, but did intentionally, and for the purpose of making defendant pay an unequal proportion of State and county taxes, assess the said property at double its actual value. And defendant avers that the general rule in this State has been to assess property at not over two-thirds its cash or actual value, and that this rule was adopted and acted upon by all local assessors in the State, and by the said State board, except in the exercise of the power conferred by section 10, art. XIII of the State constitution for said fiscal year, and that all property save that assessed by the said State board under said section has been valued and assessed at one-third less than its actual value, and that the taxes have been collected on valuations so made.

XXVII.

Defendant's franchise a Federal one.

And defendant, upon its information and belief, avers that under and by virtue of the said several acts of Congress defendant became, and ever since has been, a Federal corporation, and has held its franchise and exercised all its corporate powers under the Government of the United States.

XXVIII.

Corporate powers in part derived from acts of Congress.

And defendant, upon its information and belief, avers that if, by virtue of the several acts of Congress herein referred to, it did not become a Federal corporation, yet it holds under the Government of the United States all the corporate powers and franchises granted to it by the said several acts of Congress as the trustee of the said Government, and for the governmental uses and purposes specified in said acts.

13 XXIX.

That the franchise of defendant is not subject to State taxation.

That under and by virtue of the said several acts of Congress hereinbefore referred to the plaintiff was by the Government of the United States selected as the means and instrument of that Government to construct the railroad hereinbefore described, and to keep and maintain the same in repair, to the end that the said Government might, when occasion required, use the same for the transportation of its armies and military stores, and for such other purposes as said Government might, in the execution of its powers, desire to use the same. That the Government of the United States has never given to the State of California the right to lay any tax upon the

franchise, existence, or operations of defendant. That such a tax would hinder and impede the lawful operations of the Government of the United States; would hinder, delay, and prevent the defendant from performing, as aforesaid, its obligations to the United States, and would nullify and prevent the enforcement of the said several acts of Congress.

XXX.

Whole franchise assessed.

That the said pretended assessment made by the State Board of Equalization is upon the whole of the franchises of defendant, and that the said board, in valuing the same, included the value of all the franchises held and corporate powers exercised by defendant under said acts of Congress.

XXXI.

Tax upon the franchise blended with tax upon other property.

That the State Board of Equalization, in making said pretended assessment, included and assessed the franchise of defendant, and in making said pretended apportionment included in the valuation affixed to the property of defendant the value thereof, but that such value is not separately stated in said apportionment, nor upon any assessment roll or delinquent list of said county, but such value is in said pretended apportionment and upon the assessment roll and delinquent list of said county blended with the values affixed to the roadway, road-bed, etc., and cannot on either be distinguished or separated from such other values, and that the tax upon said franchise is in like manner blended with and cannot be separated from the tax on said roadway, road-bed, etc.

XXXII.

Valuation excessive.

Than neither the franchise, roadway, road-bed, rails, or rolling-stock were assessed by the State Board of Equalization in said pretended assessment at their actual value, or in proportion to their value, but were wilfully and intentionally assessed greatly in excess and out of proportion to such value, and greatly in excess of and out of proportion to the rate at which all other property in said State is valued, for the purposes of taxation, to wit, one hundred per cent. in excess thereof.

XXXIII.

Sole authority upon which tax is based.

That said pretended assessment is the only assessment of said property, and the pretended tax, for non-payment of which this action is brought, is founded upon said pretended assessment and upon no other assessment.

XXXIV.

County tax not the same in all townships and districts.

The defendant, upon its information and belief, avers that the tax levied by the Board of Supervisors for said fiscal year was not fixed at the same rate in every township and district in said county. And defendant, upon its information and belief, avers that said tax was levied by said board without authority of law, and that the same was illegally placed upon said assessment roll or book and delinquent list without authority. That upon the assessment roll and delinquent list of said county the said several taxes, State, county, township, and district, are blended and cannot be separated.

XXXV.

State tax void.

And defendant, upon its information and belief, avers that the State Board of Equalization never at any time did for the said fiscal year fix or determine any rate of taxation for State purposes, and that the sum and the whole thereof claimed in the complaint for State taxes for said fiscal year is illegal and void.

14 And for further and separate answer defendant avers:

XXXVI.

Plaintiff's causes of action based upon assessment by State Board of Equalization.

That on the 2 day of May, 1881, the State Board of Equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section ten of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of the railroad hereinbefore described and known as the Southern Pacific railroad, against this defendant; that said pretended assessment was made separately upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad, and was then and there so entered upon the minutes of said board; that the said pretended assessment is the assessment upon which the several taxes mentioned in plaintiff's complaint are claimed to be due, and that no other assessment than such pretended assessment was ever made against or upon said property or any part thereof.

XXXVII.

Property not assessed to the owner.

That at the time said pretended assessment was made Loyd Tevis and D. O. Mills were, and for more than three years prior thereto had been, the owners and claimants of all the franchises, roadway, road-bed, rails, and rolling-stock of said Southern Pacific railroad, and of all the property, real and personal, against or upon which said pretended assessment was made; that said property was by the

defendant duly and lawfully conveyed to the said Mills and Tevis on the first day of April, 1875, by a conveyance duly acknowledged and entitled to record, and which was afterwards, to wit, within said year 1875, duly recorded in the proper book in the recorder's office in each of the counties into and through which said road runs or is situated; that said conveyance ever since has been and still is of record as aforesaid and in full force and effect; that under and by virtue of the provisions of section 863 of the Civil Code of California, and the provisions of section 2924 of said Code as amended in 1874, said conveyance transferred to the said Mills and Tevis the whole estate of defendant in said property, and from thence hitherto, by reason of said conveyance and said provisions of the said Code, the defendant has had no estate or interest in said property or any part thereof.

And defendant avers that at the time said pretended assessment was made the Central Pacific Railroad Company, a corporation duly organized and existing, was, and for more than three years prior thereto had been, in the full, open, and notorious possession and control of all of said property lying or being within the counties of Kern, Fresno, Tulare, Los Angeles, San Bernardino, and San Diego, or in either of said counties.

And defendant avers that at the time said pretended assessment was made the defendant was not, nor had it been for more than three years prior thereto, the owner or claimant of the said Southern Pacific railroad, or of any part or portion of the property upon or against which pretended assessment was made, nor was it at the time said pretended assessment was made, nor at any time within three years next preceding the time of the making of said pretended assessment, in the possession of, or control of, said property, or any portion thereof, situated within the said counties last above mentioned, or within either of them.

Wherefore defendant prays it be hence dismissed, with costs.

P. D. WIGGINTON,
Attorney for Defendant.

CREED HAYMOND, *Of Counsel.*

15 *Verification.*

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

J. L. Willcutt, being first duly sworn, on oath says: That he is an officer, to wit, the secretary of the corporation defendant herein; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on his own information or belief, and as to those he believes it to be true.

Subscribed and sworn to before me, this 29th day of April, A. D. 1882.

[SEAL.]

CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

16 Endorsed: No. 375. Superior court, county of Fresno. The People, &c., plaintiff, *vs.* The Southern Pacific Railroad Company, defendant. Answer. Due service of the within answer admitted this 26 day of May, 1882. D. S. & S. L. Terry, by W. D. Grady, attorney for plaintiff. Filed 26th May, 1882. A. M. Clark, clerk, by A. C. Williams, deputy clerk. P. D. Wiggington, attorney for defendant. Residence, San Francisco, 330 Pine St.

17 *Petition.*

In the Superior Court, County of Fresno, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant. } No. 375.

To the honorable the superior court in and for the county of Fresno, State of California:

Your petitioner, The Southern Pacific Railroad Company, respectfully shows:

That your petitioner is the sole defendant in the above-entitled action now pending in this honorable court.

That said action was brought on the 22d day of April, 1882, the complaint therein having been duly filed on said date.

That the defendant has on this day, and before the filing of this petition, appeared in said action, and filed an answer to the complaint of plaintiff.

That no term of this court has been held since this action; and this petition is filed before the term at which the cause could be first tried.

That no trial of said action has been had, and this petition is filed before the trial thereof.

That said action is a suit of a civil nature at law, and arising under the Constitution and laws of the United States, and that the matter in dispute exceeds, exclusive of costs, the sum and value of five hundred dollars.

That said action is brought by the plaintiff to recover from the defendant on account of taxes claimed by the plaintiff to be due and payable from the defendant for State and county purposes, as will more fully appear by a reference to the plaintiff's complaint on file herein.

18 That the assessment described in the complaint and answer, and which the plaintiff in this action claims to be due and payable, is an assessment which the State Board of Equalization of the State of California pretended to make under and by virtue of the authority conferred upon the board by section 10 of article XIII of the State constitution.

That the defendant claims in this action that said provisions of the constitution of the State of California, and the authority thereby conferred upon said State Board of Equalization, violate the provisions of the Fourteenth Amendment to the Constitution of the United States, in this, that its effect is to deprive the defendant of

its property without due process of law, and that under it the defendant is denied any protection from the general laws of the State of California, which—

First. Require that property shall be taxed in proportion to its value;

Second. Require such proportions to be ascertained by a general law;

Third. Require, before the liability is fixed, that the right to be heard must be given;

Fourth. Which give an appeal from the assessor to another tribunal;

Fifth. Require the assessment to be made in the county, and prevent its being made in localities distant from the *situs* of the property;

Sixth. Prescribe the mode and manner of the assessment; and

Seventh. Which allow deductions from indebtedness secured by mortgage;

Eighth. Which require property to be assessed at its actual value.

That in the assessment and apportionment described and mentioned in the answer the franchise of the defendant and the whole thereof is included in the valuation, and so blended with the other assessments and valuations that it cannot be distinguished therefrom; and defendant claims in this action that under and by virtue of the acts of Congress of July 27th, 1866, and March 3d, 1871 (which acts are referred to in said answer), the defendant was by the Government of the United States selected as an instrument and means of that Government to carry into execution the said several acts of Congress; and defendant further claims in this action that under and by virtue of said several acts of Congress the State has no power to impose a tax upon the franchise or operations of defendant, and that such tax violates the provisions of said several acts of Congress.

That prior to the 1st day of January, 1881, the defendant was indebted to divers persons, citizens of the United States, and many of them then and now citizens and *bona fide* residents of the State of California, and others of them then and now citizens and *bona fide* residents of other States of the Union, in large sums for moneys advanced to construct and equip its railroad described in the answer herein. That to secure the payment of such indebtedness the defendant long prior to the said day executed and delivered a mortgage upon its railroad and all rolling-stock and appurtenances, and upon a large number of tracts of land situated in different counties of the State of California, which said tracts of land then were, and ever since have been, the property of defendant. That said indebtedness exceeded and still exceeds three thousand dollars per mile of said road. That no part thereof has ever been paid except the accruing interest, and that the whole thereof is now, and since the execution of said mortgage has been, a valid and subsisting indebtedness against said company defendant, and has been, and still is, secured by said mortgage.

That the said pretended assessment made as aforesaid by said

State Board of Equalization included the whole value of said property without any deduction therefrom. That under the constitution of the State of California, when property other than property such as is described in the complaint is assessed and valued for the purposes of taxation, it is the duty of the assessor making such valuation to deduct from the value of such property all indebtedness secured by mortgage or lien upon the property. That the supreme court of the State of California, the highest tribunal in said State, has decided that defendant (and others similarly situated) is not entitled to the protection of the Fourteenth Amendment of the Constitution
19 of the United States, is not a means or instrument of the Federal Government; that its franchise is assessable and subject to taxation without the consent of the Federal Government, and that defendant and others similarly situated are not entitled to the reduction hereinbefore referred to; that said decision of the supreme court of the State of California is in full force and is binding upon the inferior courts of the State, and especially upon this court; that the facts stated in the answer herein are true, which answer defendant refers to and makes part of this petition; that defendant is the corporation mentioned in the said several acts of Congress hereinbefore referred to, and that the railroad of defendant, which has been assessed by the State Board of Equalization, is the road constructed, operated, and maintained by defendant under the said several acts of Congress; that the plaintiff in said action will rely upon the decision of the supreme court of the State of California, and that the construction of said several acts of Congress and of the Fourteenth Amendment to the Constitution of the United States is in this action disputed, and must necessarily be adjudged and determined herein; and that if said adjudication and determination be in favor of defendant and against that heretofore made by the supreme court of the State of California, such adjudication and determination will be conclusive in favor of defendant upon the merits of this action; that this is a suit arising under the Constitution and laws of the United States.

That your petitioner has made and filed with this petition a bond in the penal sum of five thousand dollars, with good and sufficient surety, conditioned that your petitioner shall enter in the circuit court of the United States, to be held in the district of California, in the ninth circuit, on the first day of its next session, a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto, and also shall appear in said circuit court and enter special bail in said suit if special bail was originally requisite therein, and shall do all such other and further appropriate acts as by the act of Congress approved March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," are requisite to be done upon removal of a suit in a circuit court of the United States from a State court; and your petitioner is ready and willing to give such

other and further bonds and to do all such other acts as may be lawfully required.

Your petitioner therefore prays that this honorable court will accept this petition and said bond and proceed no further in said suit, and that said suit may be removed into the circuit court of the United States in and for the district of California, in the ninth circuit, as required by statute of the United States in such cases made and provided.

And your petitioner will ever pray, etc.

P. D. WIGGINGTON,
Attorney for Petitioner.

20 Endorsed: No. 375. In the superior court, county of Fresno. The People of the State of California, plaintiff, *vs.* The Southern Pacific Railroad Company, defendant. Petition for transfer to circuit court. Filed 26th May, 1882. A. M. Clark, clerk, by ——, deputy. P. D. Wiggington, attorney for petitioner, San Francisco, Cal. Creed Haymond, of counsel.

21 *Bond on Removal.*

In the Superior Court, County of Fresno, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant. } No. 375.

Know all men by these presents, that we, The Southern Pacific Railroad Company, as principal, and Leland Stanford and Charles Crocker, as sureties, are held and firmly bound unto The People of the State of California, plaintiffs, in the sum of five thousand dollars, to be paid to the said plaintiffs; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 1st day of May, 1882.

Whereas the above-entitled action was brought, on or about the 22d day of April, 1882, in the superior court in the county of Fresno, State of California, and the same is now pending in said superior court by said The People of the State of California against said Southern Pacific Railroad Company, and is removable into the circuit court of the United States in and for the district of California, in the ninth circuit, under and by that certain act of Congress of the United States approved March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes;"

And whereas said The Southern Pacific Railroad Company has made, and is about to file herewith, its petition in said suit in said superior court in and for the county of Fresno, State of California, for the removal of said suit into said circuit court of the United States, to be held in the said district of California, in the ninth circuit:

Now, the condition of this obligation is such, that if said The Southern Pacific Railroad Company shall enter in such circuit court of the United States on the first day of its next session a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, and also shall there appear and enter special bail in such suit, if special bail was originally requisite therein, and shall do all such other appropriate acts as by the said act of Congress are required to be done upon the removal of a suit from a State court into the circuit court of the United States, then this obligation to be void; otherwise to remain in full force and virtue.

22

SOUTHERN PACIFIC RAILROAD COMPANY,
By J. L. WILLCUTT, *Secretary.*
LELAND STANFORD. [SEAL.]
CHAS. CROCKER. [SEAL.]

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

Leland Stanford and Charles Crocker, the sureties in the foregoing obligation, being duly sworn, each for himself says: That he is a resident of the State of California and a freeholder therein, and is worth the sum of five thousand dollars over and above all his just debts and liabilities, exclusive of property exempt by law from execution.

LELAND STANFORD.
CHAS. CROCKER.

Subscribed and sworn to before me, this 1st day of March, 1882.
[L. S.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

I hereby approve of the above sureties, and accept and approve the foregoing bond.
Dated May 26th, 1882.

S. A. HOLMES,
Superior Judge.

23 Endorsed: No. 375. In the superior court, county of Fresno. The People, &c., plaintiff, *vs.* The Southern Pacific Railroad Company, defendant. Bond. Filed 26th May, 1882. A. M. Clark, clerk, by ——, deputy. P. D. Wiggington, attorney for petitioner, San Francisco, Cal. Creed Haymond, of counsel.

24 *Clerk's Certificate.*

STATE OF CALIFORNIA, }
County of Fresno, } ss:

I, A. M. Clark, county clerk and clerk of the superior court in and for said Fresno county, do hereby certify the foregoing to be

full, true, and correct copies of the original complaint, summons answer, petition, and bond in the action therein entitled now remaining on file in my office. And I further certify that the foregoing is a copy of the whole of the record in said action now on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, this 29th day of June, 1882.

[SEAL.] A. M. CLARK, *Clerk.*

Endorsed: In the circuit court of the United States for the
25 district of California. Record on removal of cause from superior court of Fresno county. Filed July 10, 1882. L. S. B. Sawyer, clerk.

26 *Amended Answer.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant. } No. 2846.

Now comes the defendant, and by leave of the court first had and obtained files this its amended answer:

I.

It denies each and every allegation in said complaint had, made, or contained.

Denies that it is now or at any time within five years last past has been a corporation existing under laws of the State of California, or otherwise than as hereinafter set out. Denies that it now is or ever has been indebted to plaintiff in any sum or sums whatever for State or county or any other taxes. Denies that it is indebted to plaintiff in any sum or sums whatever for per cent., penalty, interest, or costs, as alleged in said complaint, or otherwise.

Denies that any taxes were levied or assessed against any property in its possession or under its control for the fiscal year 1881.

Defendant refers to and makes part of this subdivision the matter stated in subdivisions 2 to 33 of this answer.

27 And for further and separate answer defendant avers as follows:

II.

Defendant a corporation—Its place of business—Line of road—Stockholders.

The defendant is a corporation existing under the laws of the United States and of the State of California (as will hereafter more fully appear). The principal place of business of defendant now is, and for many years last past has been, in the city of San Francisco,

State of California. Some of its stockholders and members now are, and ever have been, citizens of the United States, resident in said State of California; and some of its stockholders and members now are, and ever have been, citizens of the United States, resident in States other than the State of California. In the year 1868 it was duly organized under an act of the Legislature of the State of California, approved May 20th, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matter relating thereto;" and the term of its existence was fixed at fifty years from the date of its organization; and it is still a corporation duly organized under said law, except in so far as its organization, existence, and character may be affected or modified by the Federal statutes hereinafter referred to.

III.

S. P. R. R.—The uses and purposes thereof.

As such corporation, it constructed a line of railroad, and procured the rolling stock and all appurtenances thereunto belonging, known and designated as the Southern Pacific Railroad (of California), described as follows: Commencing on the waters of the Pacific Ocean, in the city and county of San Francisco, and extending in a southerly direction through portions of the county of San Francisco, and through the county of Santa Clara to Tres Pinos, in the county of San Benito, with a branch therefrom running from Carnadero, in the county of Santa Clara, to Soledad, in the county of Monterey. Said line of railroad also extends from Huron, in Fresno county, to Goshen, in Tulare county, and thence in a southerly direction by way of Tehapechi Pass, Mojave, and Los Angeles, to the Colorado river at Fort Yuma, with three branches from said line at Los Angeles, extending, respectively, to Santa Monica, Wilmington, and Santa Ana, in the county of Los Angeles. Said line of railroad is connected with the Texas & Pacific railroad at Sierra Blanca, in the State of Texas, by three railroads, to wit, the Southern Pacific railroad (of Arizona), extending from Fort Yuma to the eastern boundary line of Arizona, the Southern Pacific railroad (of New Mexico), extending from said eastern boundary line across New Mexico to the western boundary of Texas, and the Galveston, Harrisburg and San Antonio railroad, extending from said last-named boundary to Sierra Blanca. Said several railroads are operated as one continuous line from a point near Marshall, in Texas, to the Pacific Ocean at San Francisco, for the uses and purposes and in the manner contemplated by the acts of Congress hereinafter referred to.

From Tres Pinos to Huron the said Southern Pacific railroad has not been completed, but, pending its construction, connection between said points is made over the lines of the Central Pacific railroad. Defendant has not completed the construction of the road from said Southern Pacific railroad to the Colorado river, at or near the Needles, to connect with the Atlantic & Pacific railroad, hereinafter referred to, but has the construction thereof under contract, and will soon have completed a road from Mojave, on the line of said South-

ern Pacific railroad, to the said point on the Colorado river, there to connect with said Atlantic & Pacific, and with the said Atlantic & Pacific, when completed, making a continuous line from Springfield, in the State of Missouri, to the Pacific Ocean, as contemplated by the act of Congress, hereinafter referred to, chartering the Atlantic & Pacific Railroad Company.

IV.

Length of the road in the several counties.

Of said Southern Pacific railroad (of California) there had been, prior to the first Monday in March, 1880, completed, and there was in operation in the several counties through which it runs, 711.51 miles, to wit: In the city and county of San Francisco, 7.36 miles; in the county of San Mateo, 25.10 miles; in the county of Santa Clara, 59.30 miles; in the county of Santa Cruz, 2.15 miles; in the county of San Benito, 17.65 miles; in the county of Monterey,
28 49.28 miles; in the county of Fresno, 17.93 miles; in the county of Tulare, 61.98 miles; in the county of Kern, 117.83 miles; in the county of Los Angeles, 139.48 miles; in the county of San Bernardino, 54.60 miles, and in the county of San Diego, 158.85 miles, and all within the State of California.

V.

Act of Congress of July 27th, 1866—Atlantic and Pacific act.

On the 27th day of July, 1866, the Government of the United States undertook to construct, or cause to be constructed, a line of railroad from a point at or near the town of Springfield, in the State of Missouri, to the headwaters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude, as near as might be found suitable for a railroad route, to the Colorado river, at such point as might be selected, and thence by the most practicable and eligible route to the Pacific Ocean; and to that end Congress passed an act, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," which act was approved on said 27th day of July, 1866, and to said act defendant here refers by title, and makes it part of this answer. (See United States Statutes at Large, vol. 14, page 292.) By said act certain persons therein named were made and erected into a corporation, under the name and style of the "Atlantic & Pacific Railroad Company."

VI.

Intent of Congress in passing act of 1866.

The intent and purpose of Congress in passing said act was to secure the completion of a railroad from the Missouri river to the Pacific Ocean, with a branch to San Francisco, and to secure the use thereof for all time to come to the Government of the United States for the transportation of its mails, troops, munitions of war, and public stores.

VII.

Like privileges and immunities granted to defendant.

To facilitate the construction of said road the Government of the United States, by said act of Congress, adopted the defendant as the instrument or agent of the United States, and conferred upon defendant the same powers and clothed defendant with the same privileges and immunities which it conferred upon and clothed the Atlantic & Pacific Railroad Company with, except that the said defendant was to construct only that portion of said railroad between the Colorado river and the city and county of San Francisco.

VIII.

Acceptance of the conditions.

Said Atlantic & Pacific Railroad Company organized under said act, and obtained *bona fide* subscriptions to the stock of said company to the amount of one million dollars, with ten per centum paid within two years after the passage and approval of said act of Congress; and said company and defendant, immediately after the passage of said act, accepted the terms and conditions thereof, and have duly complied therewith.

IX.

Roads constructed under said act.

Said Atlantic and Pacific Company has nearly completed, and will within a short time have fully completed, the whole of said road from Springfield to the Colorado river; and defendant has constructed said road as aforesaid to Mojave, with the exception hereinbefore set out, and is prosecuting the construction thereof from said Mojave to a junction with the road of the Atlantic & Pacific Company at the Colorado river, and that the whole of said road will be completed and in operation within the present year.

X.

Act of Congress of March 3d, 1871—Texas Pacific act.

On the 3d day of March, 1871, the Government of the United States undertook to construct, or cause to be constructed, a line of railroad from Marshall, in the State of Texas, to San Diego, in the State of California, and from said line of road at the Colorado
29 river to construct, or cause to be constructed, a line of railroad which would connect the road from Marshall to San Diego with the line of road provided for in the act of Congress of July 27th, 1866, hereinbefore referred to, and by means of said connecting road to connect the road from Marshall to San Diego with the city of San Francisco; and to that end Congress passed an act, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March 3d, 1870; and subsequently, on the 2d day of May, 1872, passed an act, entitled "An act supplementary to an act entitled 'An act to in-

corporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes,'" approved March 3d, 1871. To said acts defendant here refers by title, and makes them part of this answer. (See vol. 16, U. S. Statutes at Large, 573; vol. 17, *Id.*, 59.)

XI.

Provisions of said acts accepted by the Texas Pacific Railroad Company and by defendant—their work thereunder.

Immediately after the passage of said act of March, 1871, the Texas Pacific Railroad Company was organized in pursuance thereof, and it and defendant accepted all the terms and conditions of each of said acts of 1871 and 1872, and have fully and in every respect complied therewith, and under them and in compliance with the spirit and intent of said acts have completed the roads mentioned in the third subdivision of this complaint.

XII.

Intent of Congress in passing the acts of 1871 and 1872.

The purpose of Congress in passing said acts was to insure the transportation of the mails, troops, munitions of war, supplies and stores of the United States, and to that end Congress expressly declared in said acts that no act of said companies, or either of them, nor any law of any State or Territory, should ever impede, delay, or prevent said companies, or either of them, from performing their obligations to the United States in that regard.

XIII.

The State of California confirms and vests in the Southern Pacific Railroad Company the rights, privileges, franchises, power, and authority granted to or vested in said company by the several acts of Congress.

On the 4th day of April, 1870, the Legislature of the State of California passed an act entitled "An act to aid in giving effect to an act of Congress relative to the Southern Pacific Railroad Company." By the terms of said act, and to enable said company to comply with the act of Congress of July 27th, 1866, hereinbefore pleaded, and all other acts of Congress then in force, or which might thereafter be enacted, it was provided that the right to construct, maintain, and operate by steam or other power the said railroad mentioned in said acts of Congress, and all the rights, privileges, franchises, power, and authority conferred upon or granted to or vested in said company by the said acts of Congress, and any acts of Congress which might thereafter be enacted, should be confirmed and vested in the defendant. Said act now is and ever since said 4th day of April, 1870, has been in full force and effect. (Statutes 1870, p. 883.)

XIV.

Indebtedness of defendant secured by mortgage.

On the 1st day of April, 1875, the defendant was indebted to divers persons, citizens of the United States, and many of them then and now citizens and *bona fide* residents of the State of California, in large sums of money advanced to construct and equip the railroad hereinbefore described. To secure the payment of such indebtedness the defendant, on the said first day of April, 1875, executed and delivered a mortgage upon said Southern Pacific Railroad, its franchises and all rolling-stock and appurtenances, and upon a large number of tracts of land, aggregating over eleven million of acres, situated in different counties in the State of California, which said tracts of land then were and ever since have been the property of defendant. Said indebtedness amounts to the sum of forty-six million of dollars, and no part thereof has ever been paid except the accruing interest, and the whole thereof is now and since the execution of said mortgage has been a valid and subsist-
30 ting indebtedness against said company, and has been and still is secured by said mortgage, a copy of which, with the endorsements thereon, is hereunto annexed and made a part hereof, marked Exhibit "A."

XV.

Mortgaged lands—Mode and manner of assessment—Payment of taxes.

The lands mentioned in the preceding subdivision are not, and never have been, in any way connected with the railroad business of the defendant. They are agricultural and grazing lands, held, owned, and used for farming and grazing purposes, and are situated as follows in the counties of the State of California, and are distributed in the respective counties in the following quantities: In Santa Clara county, 3,138 acres; San Benito county, 1,879 acres; Monterey county, 1,879 acres; Stanislaus county, 32,242 acres; Merced county, 20,655 acres; Fresno county, 18,789 acres; Tulare county, 260,315 acres; Kern county, 168,096 acres; Los Angeles county, 38,033 acres; San Bernardino county, 30,686 acres; San Diego county, 5,787 acres.

Said lands and all of them for each of the years 1880, 1881, and 1882 were assessed by the assessors of the respective counties in which they are situated at their full cash value, and no deduction from said value was made or allowed on account of said mortgage or the indebtedness secured thereby; on the contrary, the laws of the State of California under which said assessors acted in making said assessments prohibited any deduction from said values on account either of the mortgages or the indebtedness secured thereby.

In each of said years the defendant paid in full, at the time the same became payable, all the taxes levied upon said lands, amounting, in the aggregate, for State, county, and municipal purposes, to $92,442.49.

The laws of the State of California, then and ever since in force,

provide that in the assessment and valuation of lands of like character and situation, and in every respect similar both in quality and use, not owned by railroad or other quasi-public corporations, a mortgage thereon by which a debt is secured shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, and that in the assessment and valuation of such property for the purposes of taxation the value of said mortgages shall be deducted therefrom, and the owner of said lands or property only assessed and taxed for the value in excess of the value of the mortgage.

To assist the assessor in the performance of his duties, and to enable him to make the deductions aforesaid, the laws of the State of California make it the duty of the recorder of each county annually, on or before the first Monday in April, to transmit to the assessor a complete abstract of all mortgages by which any debt is secured remaining unsatisfied on the records of his office at 12 o'clock meridian on the first Monday of March of said year; and it is further provided by said laws that should any such list be found to contain any instrument relating to lands situated in more than one county, it shall be the duty of the assessor to transmit to the State Board of Equalization all information relating thereto, and it shall be the duty of the State board to attach an apportionment of valuation of such instrument to be assessed in each county, and to transmit to the assessor of each county mentioned as affected in said instrument a statement of valuation of assessment to be levied against said instrument in such county. (Political Code, sect. 3678.)

In the matter of the valuation of its said lands for the purposes of taxation the defendant is, and ever has been, deprived of all the benefits of the said laws which provide for the deduction of indebtedness secured by mortgage from the valuation of lands by reason of the provisions of section 4 of article XIII of the constitution of the State of California, and the action of assessors in pursuance thereof; while all natural persons and all corporations, not quasi-public, within the State of California, are entitled to receive, and do receive, the full benefit of said laws, and the deductions required to be made thereunder.

XVI.

Assessment by State Board of Equalization.

On the 2 day of May, 1881, the State Board of Equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section 10 of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and
31 rolling-stock of said railroad against defendant. Said pretended assessment was made separately upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad, and was then and there so entered upon the minutes of said board. Said assessment is the assessment upon which the several taxes mentioned

in the complaint herein are based: and no other assessment than the aforesaid was ever made of said property, or any part thereof, for said fiscal year.

XVII.

Failure of State Board to transmit assessment.

The State Board of Equalization never did at any time transmit said pretended assessment, or any assessment of said property, or any part thereof, to the assessor, or to any of the authorities of said Fresno county, and never at any time caused the same to be entered upon the assessment roll of said county for said fiscal year, or for any other year, nor has said pretended assessment, or any part thereof, or any assessment against said defendant or said property, or any part thereof, ever been entered upon or made part of any assessment roll, book, or delinquent list in or for said county.

XVIII.

State Board never apportioned assessment.

Defendant avers, upon its information and belief, that neither said pretended assessment nor any assessment against defendant in respect to said property, or any part thereof, was ever entered upon any assessment roll or book of said county, or upon any delinquent list of said county, nor was any entry relative to the action of the said State Board of Equalization in respect to the assessment or apportionment of said property, or any part thereof, ever entered upon said assessment roll or book, except a letter from the State Board of Equalization, addressed to the assessor of said county, which letter did not contain said assessment or any part thereof, nor a copy of said assessment or any part thereof, nor did it contain any apportionment thereof, as provided for in section 10 of article XIII of the constitution of the State of California, hereinbefore referred to or otherwise.

XIX.

No assessment was ever made or entered on the assessment roll.

Defendant, upon information and belief, avers that neither said pretended assessment nor any assessment against this defendant, or any other person or persons, in respect to the said property, or any part thereof, was ever entered upon any assessment roll or book of said county, nor upon any delinquent list of said county, nor was any entry relative to the action of the said State Board of Equalization in respect to the assessment or apportionment of said property of defendant, or any part thereof, ever entered upon said assessment roll or book, except the said letter of the said State Board of Equalization. Said letter was copied by the assessor of said county on or about the 1st day of June, 1881, upon the assessment. Upon said assessment roll opposite said letter is entered in figures, $295,845, and opposite said figures, under the head of taxes due, is entered in figures $5,029.37. The same entries, and no others, appear upon the delinquent list of said county for said fiscal year. As defendant

is informed and believes, and upon such information and belief, charges the truth and fact to be there are in respect to said property, and in respect to defendant, no other or further entries upon any assessment roll, book, or delinquent list of said county.

XX.

State board pretended to assess the whole of said property to defendant.

The State Board of Equalization, in making the said pretended assessment, pretended to assess to and against defendant the full cash value of said railroad, roadway, road-bed, rails, rolling-stock, and franchises, without deducting therefrom the value of the mortgage, or any part thereof, given and existing thereon as aforesaid to secure the indebtedness of said company to the holders of said bonds, notwithstanding, as defendant avers, they had full knowledge of the existence of such mortgage.

32 XXI.

State board did not treat said mortgage as an interest in the property

In making said pretended assessment the said State Board of Equalization did not deem or treat said mortgage as an interest in said property, but did assess the whole value of said property to the defendant in the same manner it would have done had there been no mortgage thereon.

XXIII.

Authority exercised by State board violates provisions of Fourteenth Amendment.

Under the constitution of the State of California the board of supervisors of the several counties of the State constitute boards of equalization for their respective counties, whose duty it is to equalize the valuation of the taxable property in the county, except the franchise, roadway, road-bed, rails, and rolling stock of railroads operated in more than one county of the State, and to such boards the owners of all property, except as above stated, have the right and privilege to apply for the correction of their assessments, and have the right and privilege of a hearing before the said local boards of equalization. By the provisions of the constitution of California, and the laws in pursuance thereof, this right and privilege, or any right or privilege, to be heard in relation to assessments is denied to defendant in respect to the property in question. All of which defendant avers is contrary to the provision of the Fourteenth Amendment to the Constitution of the United States, which declares that no State shall deny to any person within its jurisdiction the equal protection of the laws.

XXIV.

Further violation of the Fourteenth Amendment.

The power conferred upon the State Board of Equalization by sec-

tion ten of article XIII of the constitution of California violates the provisions of the Fourteenth Amendment to the Constitution of the United States, which declares that no State shall deprive any person of life, liberty, or property without due process of law; for that said section, as to such power, is self-executing and complete, and does not provide for personal or other notice to be given to the parties to be affected by the exercise of such power; and does not provide for a full or any opportunity of time, place, or tribunal for such parties to be heard in defense of their rights; and hence, under and by said provision of the constitution of the State of California, the liability of owners of such property to taxation, and the amount thereof, may be fixed without notice to them or an opportunity to be heard.

XXV.

Further discrimination.

The provisions of section four of the constitution of the State of California, providing for the assessment of the property of railroad and other *quasi*-public corporations, is in contravention of the provisions of said Fourteenth Amendment of the Constitution of the United States, in that it discriminates against such corporations; in this, that whereas, under said section four of said article XIII of the constitution of the State of California, if the property of natural persons or corporations, not *quasi*-public, has a mortgage, lien, or incumbrance thereon, they are not liable to assessment or taxation upon such property, but only upon the value of their interest in such property over and above the value of such mortgage, lien, or incumbrance; whereas, in the case of the property of railroad and other *quasi*-public corporations, no such allowance or deduc-
33 tion is made, had, or allowed with respect to any mortgage, lien, or incumbrance there may be upon such property; and also in this, that while the tenth section of article XIII of the constitution of the State of California provides the same mode for the assessment of the franchises, roadway, road-bed, rails, and rolling-stock of all railroads operated in more than one county, whether such property be owned by railroad or other *quasi*-public corporations, or by private corporations, or by natural persons, yet section four of article XIII of said constitution permits or allows indebtedness secured by mortgage, trust deed, or otherwise to be deducted from the value of such property only when it is owned by natural persons or corporations not *quasi*-public, and denies such deduction when the property is owned by railroad or other *quasi*-public corporations.

XXVI.

Section 10 of article XIII of said constitution of California provides that all property, except the franchise, roadway, road-bed, rails, and rolling-stock of all railroads operated in more than one county in the State shall be assessed in the county, city, city and county, town, township, or district in which it is situated, in the manner prescribed by law.

The laws of said State prescribe that all property, except that above mentioned, shall be assessed in the county in which it is situated by an assessor elected by the people of such county.

XXVII.

Further discrimination.

All owners of railroad property, operated in more than one county, by virtue of said section ten of article XIII, are denied any protection from the laws of the State of California which—

(*a.*) Require that property shall be taxed in proportion to its value.

(*b.*) Require such proportions to be ascertained by a general law.

(*c.*) Require that before liability be fixed an opportunity to be heard must be given.

(*d.*) Give an appeal from the assessor to boards of equalization.

(*e.*) Require the assessment to be made in the county, and prohibit its being made in localities distant from the *situs* of the property.

(*f.*) Which prescribe mode and manner of the assessment.

And defendant avers that at and before and ever since the adoption of the constitution of California, now in force, there were and are existing under the laws of said State corporations of various kinds, formed for the purpose of and actually operating and doing business and holding and using and operating property in more than one county in said State, and that at all of said times there were and there now are divers natural persons, residents of said State, operating property in more than one county in said State, and that at all of said times there were and now are railroads owned by corporations formed under the general laws of said State, and also by natural persons, which are only operated in one county. That by the provisions of section ten of article XIII of said State constitution persons operating railroads in more than one county in the State have been singled out from all other persons operating property in more than one county and denied the right, common to all other persons, to appeal for relief from over-valuations of their property by assessors to the local board of equalization, and denied the rights and privileges accorded by the laws to all other persons in that respect.

34 Corporations in said State of California now are and ever have been formed under general laws relating thereto, and railroad and all other corporations, except public corporations formed or organized for the government of a portion of the State, now are and ever have been designated by the laws of California as private corporations. Under the provisions of the laws relating to the formation of private corporations such corporations may be formed for any purpose for which individuals or natural persons may lawfully associate themselves together; and there now exist in California, and ever have existed, corporations formed under said laws for fire, marine, mutual life, health and accident insurance; building, constructing, and operating railroads, wagon roads, tele-

graphs, bridges, ferries, wharves, chutes, and piers, and for constructing and operating canals, for the purposes of acquiring lands in large tracts and distributing them as homesteads among the corporators, for savings and loans, for mining, for the sale and distribution of water in cities and towns, for manufacturing, mechanical, and agricultural purposes; for benevolent, charitable, and educational purposes; for cemeteries, agricultural fairs, and various other purposes.

In said State of California there now are, and for more than three years last past have been, various railroads owned, operated, and controlled either by individuals, partnerships, or by private corporations other than railroad corporations, to wit, by mining and manufacturing corporations. There now is, and for more than three years last past has been, a railroad in use and operation extending from the city of Marysville, in the county of Yuba, to the town of Oroville, in the county of Butte, in said State, a distance of twenty-seven miles, which said road now is, and ever has been, operated in more than one county in this State, and is of the same gauge as the road of this defendant, and has ever been operated for like uses and purposes.

Said road, with all its equipments, now is, and for more than three years last past has been, in the ownership and under the operation and control of one N. D. Rideout, a citizen of the United States, and resident of the State of California.

There now is, and for more than three years last past has been, a railroad extending from the town of Santa Cruz, on the Pacific Ocean, and in the county of Santa Cruz, eastward through said county and into the county of Monterey to the town of Pajaro, a distance of about twenty-one miles. Said road now is, and for a long time past has been, owned, operated, and used for like purposes for which the defendant's road is owned, operated, and used, and that the same now is, and for a long time past has been, in the ownership and operated by the Pacific Improvement Company, a private corporation formed under the laws of the State of California, which said corporation is not, and never has been, a railroad or *quasi*-public corporation.

There now are, and for more than five years last past have been, divers other railroads owned and operated in said State by corporations other than railroad corporations, and by individuals and partnerships; and that all of said corporations, individuals, and partnerships are the owners of lands which are assessed by the local assessors of the various counties in which such lands are situated, and all are entitled under the laws of said State to the deductions provided for in said laws, and, as said defendant, upon information and belief, avers, have been allowed such deductions.

XXVIII.

System adopted by said board violates rules of equality.

The State Board of Equalization, in making said pretended assessment of the said roadway of defendant, did willfully and designedly include in the valuation of said roadway the value of fences

erected upon the land of coterminous proprietors, and did willfully and designedly value the said roadway at a greater value than the value of other property similarly situated, and greater than its actual value, upon the ground that such increased valuation should be made because the title of defendant thereto was acquired by condemnation.

The value of such fences, which were not the property of defendant nor the property of the owners of said roadway, and the increased value affixed to the roadway by the system adopted by the board, are blended in said pretended assessment, and there is no mode or means by which such illegal valuation can be separated from those which may be legal.

35 XXIX.

Defendant's franchise a Federal one.

And defendant, upon its information and belief, avers that under and by virtue of the said several acts of Congress defendant became, and ever since has been, a Federal corporation and has held its franchise and exercised all its corporate powers under the Government of the United States.

XXX.

Corporate powers in part derived from acts of Congress.

And defendant, upon its information and belief, avers that if by virtue of the several acts of Congress herein referred to it did not become a Federal corporation, yet it holds under the Government of the United States all the corporate powers and franchises granted to it by the said several acts of Congress as the trustee of the said Government, and for the governmental uses and purposes specified in said acts.

XXXI.

That the franchise of defendant is not subject to State taxation.

Under and by virtue of the said several acts of Congress hereinbefore referred to the defendant was by the Government of the United States selected as the means and instrument of that Government to construct the railroad hereinbefore described, and to keep and maintain the same in repair, to the end that the said Government might, when occasion required, use the same for the transportation of its armies and military stores, and for such other purposes as said Government might, in the execution of its powers, desire to use the same. The Government of the United States has never given to the State of California the right to lay any tax upon the franchise, existence, or operations of defendant. Such a tax would hinder and impede the lawful operations of the Government of the United States; would hinder, delay, and prevent the defendant from performing, as aforesaid, its obligations to the United States, and would nullify and prevent the enforcement of the said several acts of Congress.

36

XXXII.

Whole franchise assessed.

Said pretended assessment made by the State Board of Equalization is upon all of the franchises of defendant, and the said board, in valuing the same, included the value of all the franchises and corporate powers held and exercised by defendant under said acts of Congress.

XXXIII.

Tax upon the franchise blended with tax upon other property.

The State Board of Equalization, in making said pretended assessment, included and assessed the franchise of defendant, and in making said pretended apportionment included in the valuation affixed to the property of defendant the value thereof, but such value is not separately stated in said apportionment, nor upon any assessment roll or delinquent list of said county, but such value is in said pretended apportionment and upon the assessment roll and delinquent list of said county, blended with the values affixed to the roadway, road-bed, etc., and cannot on either be distinguished or separated from such other values, and the tax upon said franchise is in like manner blended with and cannot be separated from the tax on said roadway, road-bed, etc.

XXXVIII.

Plaintiff's causes of action based upon assessment by State Board of Equalization.

On the — day of May, 188–, the State Board of Equalization of the State of California, pretending to act under and by virtue
37 of the powers conferred upon it by section ten of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of the railroad hereinbefore described and known as the Southern Pacific railroad, against this defendant; that said pretended assessment was made separately upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad, and was then and there so entered upon the minutes of said board. Said pretended assessment is the assessment upon which the several taxes mentioned in plaintiff's complaint are claimed to be due, and that no other assessment than such pretended assessment was ever made against or upon said property or any part thereof.

Wherefore defendant prays it be hence dismissed, with costs.

P. D. WIGGINTON,
Attorney for Defendant.

S. W. SANDERSON AND
CREED HAYMOND,
Of Counsel.

38 *Verification.*

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

J. L. Willcutt, being first duly sworn, on oath says: That he is an officer, to wit, the secretary of the corporation defendant herein; that he has read the foregoing amended answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on his own information or belief, and as to those he believes it to be true.

J. L. WILLCUTT.

Subscribed and sworn to before me, this 16th day of July, A. D. 1883.

[SEAL.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

39 "EXHIBIT A."

This indenture, made and entered into this the first day of April, A. D. 1875, by and between the Southern Pacific Railroad Company, a railroad corporation duly incorporated and organized under and in pursuance of the laws of the State of California, party of the first part, and D. O. Mills and Lloyd Tevis, of the city and county of San Francisco, California, parties of the second part, witnesseth: That

Whereas the said party of the first part desires to complete the construction and equipment of its railroad and telegraph lines in the State of California, running from the city of San Francisco in a southerly and southeasterly direction, by way of Carnadero Junction, Salinas Valley, and Polonio Pass, to the Colorado river, at or near the "Needles;" also from Carnadero Junction to San Benito; also from Los Gatos creek, via Goshen, to the junction with the first-mentioned line between Poso creek and Kern river; also from the junction near Tehachapi Pass, via Los Angeles, to the Texas Pacific railroad, near Fort Yuma; and also from Los Angeles to Wilmington, on San Pedro bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, and to cancel its present bonded indebtedness for construction, secured by a mortgage heretofore made, and bearing date November first, eighteen hundred and seventy, and to that end intends and is about to issue its first mortgage bonds upon said railroad and telegraph line, and its rolling stock, fixtures, and franchises, and also upon the lands granted to it by Congress by the act of Congress entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July twenty-seventh, eighteen hundred and sixty-six, and the act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one, not sold or otherwise dis-

posed of prior to the execution of this mortgage, aggregating, as near as can be estimated, eleven millions of acres; And

Whereas, heretofore, to wit, on the nineteenth day of December, A. D. eighteen hundred and seventy-four, the board of directors of said company, pursuant to the statute of the State of California in such cases made and provided, at a meeting of said board, at which all the members thereof were present, did, by a resolution to that effect, which was unanimously adopted and passed, determine and direct that first mortgage bonds upon said railroad and telegraph line, its rolling-stock, fixtures, and franchises, and upon said hereinbefore described lands, to the number of forty-eight thousand (forty-four thousand of which shall be for one thousand dollars each, and four thousand of which shall be for the sum of five hundred dollars each), in seven series, to be designated by the letters of the alphabet, commencing with the letter "A," and followed by the succeeding letters in regular order to the letter "G," both inclusive, be prepared, executed, and issued by the president and secretary of said company. Series "A" to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive. Series "B" to "F," both inclusive, consisting each of five thousand bonds, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive, and Series "G," consisting of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds being payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually. The said Series "A" to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the board of directors of said company may direct; all of said bonds aggregating the sum of forty-six millions of dollars; And

Whereas the said board of directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further resolve that the said Series "A" of said bonds should be executed and issued in substantially the following form, and that the succeeding series of said bonds should be in a similar form, with the necessary changes to conform to said resolutions or orders, which form is as follows, to wit:

THE UNITED STATES OF AMERICA.

In United States gold coin, $1,000. In United States gold coin, $1,000

(VIGNETTE.)

First Mortgage Bond.

No. —. Series "A."

The Southern Pacific Railroad Company (of California),

for value received, promises to pay one thousand dollars to Mark Hopkins, or bearer, in the city of New York, thirty years from the

date hereof, with interest thereon at the rate of six per centum per annum from said date, payable semi-annually on the first day of October next ensuing, and on the first day of April and October in each year thereafter, in the city of New York, on presentation and surrender of the respective coupons hereunto annexed, both principal and interest payable in United States gold coin at par, dollar for dollar.

40 This bond is one of Series "A" of the first mortgage bonds issued and to be issued by the said Southern Pacific Railroad Company in seven series designated respectively by the letters of the alphabet, commencing with "A" and ending with "G," both inclusive. Series "A" consisting of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive. Series "B" to "F," both inclusive, consisting each of five thousand bonds for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive, and Series "G," consisting of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds being payable thirty years after their respective date, with the interest at the rate of six per centum per annum, payable semi-annually.

The said Series "A" to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the board of directors of said company may direct; all of said bonds aggregating the sum of forty-six millions of dollars.

The holder of any such bonds is to have no preference over any other holder of any of said bonds by reason of any priority in date or the time of issuing the same or otherwise.

All of said bonds are secured by a mortgage or deed of trust bearing even date with the bonds constituting Series "A," duly executed by said company to D. O. Mills and Lloyd Tevis, San Francisco, California, as trustees, upon its railroad and telegraph lines in the State of California, running from the city of San Francisco in a southerly and southeasterly direction by way of Carnadero Junction, Salinas Valley, and Polonio Pass to the Colorado river at or near the "Needles;" also, from Carnadero Junction to San Benito; also, from Los Gatos creek via Goshen to the junction with the first mentioned line between Posa creek and Kern river; also from the junction near Tehachapi Pass via Los Angeles, to the Texas Pacific railroad near Fort Yuma, and also from Los Angeles to Wilmington on San Pedro bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, with all the rolling-stock, stations, fixtures, and franchises for the permanent use thereof, and the appurtenances thereto now owned or held, or that may be hereafter required by said company for the permanent use of said railroad and telegraph lines.

Also upon all the lands granted to said company by the Congress of the United States to aid it in the construction of said railroad and

telegraph lines, not sold or otherwise disposed of prior to the execution of said mortgage, aggregating, as near as can be estimated, eleven millions of acres.

In testimony whereof, the Southern Pacific Railroad Company has caused its corporate seal to be hereunto affixed, and these presents to be signed by its president and secretary, this first day of April, in the year of our Lord one thousand eight hundred and seventy-five.

——— ———, *President.*
——— ———, *Secretary.*

And whereas, the said board of directors, at the meeting aforesaid and in the manner and form, and by the vote aforesaid, did further direct that to each of said bonds there should be attached sixty interest coupons, numbered respectively from one to sixty, inclusive, substantially in the following form, to wit:

$30. SOUTHERN PACIFIC RAILROAD COMPANY OF CALIFORNIA. Series A.

Coupon. Bond No. —. No. —.

Thirty Dollars.

Interest due —— ——.

Payable in the City of New York in United States gold coin.

——— ———, *Secretary.*

with such changes in amount in the body and in the coupon as shall be necesary to conform to the order of the board of directors aforesaid, in regard to the several amounts or sums which are payable in each class of bonds; And

Whereas by an act of Congress of the United States of America, approved on the twenty-seventh day of July, A. D. eighteen hundred and sixty-six, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," there was granted to the said Southern Pacific Railroad Company, party of the first part, a large body of public lands of the United States, to wit: Every alternate section of public lands, designated by odd numbers, to the amount of ten alternate sections per mile on each side of the railroad and telegraph line of said company running from the bay of San Francisco to the southeasterly line of the State of California, being about six hundred and thirty-six miles, not sold, reserved, granted, or otherwise appropriated, and free from pre-emption, homestead, or other claims or rights at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office, and such other alternate
41 sections designated by odd numbers as aforesaid, and situated not more than ten miles beyond the limits of the said first alternate sections, which may be selected by said company in lieu of any of the sections first aforesaid which may have been sold, granted, reserved, pre-empted, occupied as homesteads, or otherwise disposed

of, or to which other rights may have attached, as provided in the act of Congress aforesaid for the purpose of aiding in the construction of the railroad and telegraph line of the said party of the first part; And

Whereas by an act of Congress of the United States of America, approved on the third day of March, eighteen hundred and seventy-one, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," there was granted to the said Southern Pacific Railroad Company the authority to construct a line of railroad from a point near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific railroad, at or near the Colorado river, with the same rights, land grants, and privileges and subject to the same limitations, restrictions, and conditions as were granted to and imposed upon the said S uthern Pacific Railroad Company of California by the aforesaid act of July twenty-seventh, eighteen hundred and sixty-six, before recited, subject to the rights, present and prospective, of the Atlantic and Pacific Railroad Company, which said last line of road is of the length of three hundred and fifty-six and seven one-hundredths miles; And

Whereas the said board of directors, at the meeting aforesaid, and in the manner and form and by the vote aforesaid, did further direct that, to secure the payment of said bonds, a first mortgage upon said road and its rolling-stock, stations, fixtures, right of way, and franchises, and the lands aforesaid granted by said acts of Congress not sold or otherwise disposed of or contracted to be sold, as shown by the books of said company, should be executed under the corporate seal of said company, and be signed by its president and secretary, to D. O. Mills and Lloyd Tevis, both of the city and county of San Francisco, State of California, as trustees for the holders of said bonds; And

Whereas said board of directors, at the meeting aforesaid, and in the manner and form and by the vote aforesaid, did further direct that a sinking fund should be created for the redemption and payment of said bonds, by setting apart the sum of one hundred thousand dollars of the net income of said road in the year eighteen hundred and eighty-two, and each year thereafter, until all of said bonds, principal and interest, shall have been redeemed or paid, in trust, to be loaned out at interest, upon good securities, or otherwise invested under the order and direction of said board of directors, or used to redeem said bonds as often as one hundred thousand dollars shall come into the sinking fund, in which case notice shall be published, in one paper in the city of San Francisco and two papers in New York city, that bonds will be redeemed at a price not exceeding their par value, and inviting bids for the surrender thereof at prices to be named, not exceeding the par value of said bonds; the lowest bids less than par to be accepted, and bonds redeemed to the extent of the money in the sinking fund:

Now, therefore, this indenture witnesseth: that the said Southern Pacific Railroad Company, for the better securing of the payment of the principal and interest of the said first mortgage bonds, and in consideration also of the sum of one dollar, to it in hand paid by the

said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and aliened, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, convey, and confirm, unto the said parties of the second part, and to their successors duly appointed, for the execution of the trusts herein set forth, the following property now or hereafter constituted, purchased, acquired, held in possession, and owned by said company, to wit: The whole of the railroad and telegraph line of the said company, running from the city of San Francisco, in the State of California, in a southerly and southeasterly direction, by way of Carnadero Junction, Salinas Valley, and Polonio Pass, to the Colorado river, at or near the "Needles;" also, from Canadero Junction to San Benito; also, from Los Gatos creek via Goshen, to the junction with the first-mentioned line, between Poso creek and Kern river; also, from the junction near Tehachapi Pass via Los Angeles, to the Texas Pacific railroad near Fort Yuma, and also from Los Angeles to Wilmington, on San Pedro bay, aggregating eleven hundred and fifty miles of railroad and telegraph lines, including all the rights of way, roadway, track and tracks, together with all the superstructures, depots, depot grounds, station houses, watering places, workshops, machine shops, machinery, side tracks, turn-outs, turn-tables, weighing scales, locomotives, tenders, cars, rolling-stock of all kinds, full equipments, fixtures, tools, and all other property which may be necessarily or ordinarily used in operating or repairing the said railroad, including all of the said property which is now or may hereafter, in whole or in part, be constructed or completed, purchased, acquired, held, or owned by the said company pertaining to said railroad, and all the corporate rights, privileges, and franchises of said company pertaining to said road, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging and appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues, and profits thereof, with all the rights, titles, interests, estate, property, succession, claim, and demand, in law or equity, of the said party of the first part of, in, and to the same, or any part and parcel thereof; to have and to hold the above granted and described premises, property, and franchises, with the appurtenances, unto the said parties of the second part, and to the survivor of them, and to their successors, duly appointed, upon trust and for the use and benefit of the person or persons, body or bodies politic or corporate, who shall have become, or be from time to time, holders of the said "first mortgage bonds," or any of them. Provided, always, and these presents are upon the express condition, that if the said party of the first part, or its successors, shall well and truly pay or cause or procure to be paid unto the holders, from time to time, of said bonds, and each and every one of them, the said sums of money secured to be paid by the said bonds, and the interest coupons attached thereto, at the places and times and in the manner set forth in the said bonds, according to the true intent and meaning thereof, then these presents, and all the property, estate, right, franchises, and privileges herein and hereby granted and conveyed, shall cease, determine, and be void. But if default shall be made in the payment of the

said sums of money specified in said bonds, or in the pay-
42 ment of said interest coupons, or either of them, or any part thereof, and if the same shall remain unpaid for the period of six months from and after the time when the same should have been paid, according to the terms of said bonds, then the said parties of the second part, or either of them, upon the refusal of the other or their successors in said trust, by themselves or their agents or servants in that behalf, may upon request of the holder or holders of not less than one-fourth of said bonds on which the interest or principal shall so be and have so remained in default, as aforesaid, enter into and upon and take possession of all or in their or his discretion any part of the said premises and property hereinbefore described, and work and operate the said railroad and receive the income, receipts, and profits thereof, and out of the same pay, first, the expense of running and operating the same, including therein such reasonable compensation as they or he may allow to the several persons employed or engaged in the running and superintendence of the same, and a reasonable compensation to the parties of the second part or their successors or such of them as shall act in the premises; for their or his care, diligence, and responsibility in the premises; second, the expenses of keeping the said road, the appurtenances, the locomotives, and the rolling-stock thereof, in good and sufficient repair, to prevent deterioration in the value thereof, and all other reasonable and proper charges and expenses of the care and management thereof; and, third, pay, as far as the same will suffice, all interest and principal, if any, which may be due on said bonds. And in case of any deficiency to apply said receipts, after the payment of all said charges and expenses, to the payment thereof ratably, without preference of any kind, or the said parties of the second part may in such case foreclose this mortgage and sell and dispose of according to law all the rights, property, privileges, franchises, real and personal, with the appurtenances herein and hereby granted, or so much thereof as may be necessary, and out of the money arising from such sale pay, first, the costs and charges and expenses of the foreclosure and sale, including therein reasonable counsel fees for conducting said proceedings, to be allowed and fixed by the court, but not exceeding thirty thousand dollars; second, any expenses, costs, and charges of the execution of the trust previously incurred and remaining unpaid; third, a reasonable compensation to the trustees or one of them who may act, for their or his care, trouble, and service in completing the execution of his trust and the distribution of the proceeds of sale, to be fixed by the court, but not exceeding twenty thousand dollars; and, fourth, to distribute the residue of said proceeds among the holders of said bonds in proportion to their several interests until all have been paid in full, principal and accrued interests.

And the said party of the first part hereby covenants and agrees that if at any time any lands now used for depot or shop purposes or right of way or water or any lands not now used, but which may be hereafter used for such purposes, shall, for any cause, cease to be needed or used by said party of the first part for such purposes, the

said parties of the second part may sell the same at the price to be agreed upon by the parties of the first and second parts, and apply the money realized from such sale or sales to the redemption of said bonds in the manner hereinafter provided in the case of money realized from the sale of lands granted by the United States to the said party of the first part.

And the said party of the first part hereby agrees and covenants to and with the said parties of the second part and their successors in said trust that it will pay all ordinary and extraordinary taxes, assessments, and other public burdens and charges which shall or may be imposed upon the property herein described and hereby mortgaged, and every part thereof, and the said parties of the second part, the survivor of them, or their successors in said trust, or any one or more of the holders of said bonds, may in case of default of the said party of the first part in this behalf pay and discharge the same, and any other lien or incumbrance upon said property which may in any way, either in law or equity, be or become in effect a charge or lien thereon prior to these presents or to which this mortgage may be subject or subordinate, and for all payments thus made the parties so making the same shall be allowed interest thereon at the rate of seven per centum per annum, and such payments, with the interest thereon, shall be and are hereby secured to them by these presents, and declared to be payable and collectible in the same sort of currency or money wherein they shall have been paid, and the same shall be payable by said party of the first part to said parties of the second part upon demand, in trust for the party or parties paying the same, and may be paid out of the proceeds of the sale of said property and franchises hereinbefore provided.

And the said party of the first part hereby further covenants and agrees to and with the said parties of the second part and their successors in said trust that they will at any and all times hereafter, upon the request of the said parties of the second part, execute, acknowledge, and deliver to the said parties of the second part all and every such further, necessary, and reasonable conveyances and assurances of the said premises or any part thereof as may by the parties of the second part, or the survivor of them, or his or their successors in the trust hereby created, be reasonably advised or required for more fully carrying into effect the objects of this conveyance; and the said parties of the second part and their successors in said trust shall be entitled to receive a just and proper compensation for all services rendered by them in the discharge of said trust, and the same shall be deemed to be secured hereby.

And it is hereby stipulated and agreed that the said parties of the second part and their successors in said trust shall not be responsible for the acts or omissions of any agent or agents employed by him or them, in any manner, in and about the execution of the trust hereby created, when such agent or agents are selected with reasonable discretion, or with the approbation or with the knowledge and without the express disapprobation of said party of the first part, nor shall either of the said parties of the second part be responsible for any act or omission of the other in the execution of said trust.

And, therefore, this indenture further witnesseth, that the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said bonds and the interest thereon, and in consideration of the premises, and also for and in consideration of the sum of one dollar, to the said party of the first part in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, enfeoffed, conveyed, and confirmed, and by these presents does grant, bargain, sell, release, enfeoff, convey, and confirm, unto the said parties of the second part, as trustees, and to their successors and survivor, and their assigns, forever—

All and singular the said several sections of land so as aforesaid granted by said acts of Congress; and also all the estate, right, title, interest, claim, and demand whatsoever, at law or in equity, of, in, or to the same, or any part or parcel thereof, which the said
43 party of the first part now has, holds, owns, or is entitled to, or hereafter may or shall acquire, have, hold, own, or be or become entitled to, by force or virtue of the said acts of Congress; saving, excepting, and reserving all parts and parcels of said lands which have been sold or contracted to be sold or disposed of heretofore, or which are or shall be included in the right of way of the said railroads and telegraph lines of the said company, as defined and granted by the acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings, or erections thereof.

To have and to hold all and singular the lands hereby granted or intended to be granted, and each and every part and parcel thereof, with the appurtenances thereunto belonging, unto the said parties of the second part, and their successors and survivor, and their assigns, forever, as trustees, for the uses and purposes, and upon the trusts, terms, conditions, and agreements in this indenture set forth and declared.

Provided always, and these presents are upon the express condition, that if the said party of the first part shall well and truly pay, or cause to be paid, to the holders of said bonds, and every of them, the principal sums of money therein mentioned, according to the tenor thereof, with interest thereon, at the times and in the manner hereinbefore provided, according to the true intent and meaning of these presents, then and from thenceforth this indenture, and the estate hereby granted, shall cease and determine, and all the right, title, and interest in any and all property hereby conveyed to the parties of the second part not then disposed of under the powers hereby conferred shall revert to and vest in the said party of the first part.

This indenture further witnesseth that these presents and the said bonds are made, executed, and delivered upon the trusts, terms, conditions, and agreements following, that is to say: That all the lands hereinabove conveyed and mortgaged shall be under the sole and exclusive management and control of the said party of the first part, who shall have full power and authority to make contracts for the sale of the same at such price, on such credit or terms of pay-

ment, and such other conditions as shall be agreed on by the said parties of the first and second parts, and as shall seem to them best calculated to secure the payment in full of all the bonds issued, as hereinbefore provided, until entry or foreclosure by the trustees, as hereinafter provided; but no title to any tract of land, contracted to be sold by the said party of the first part, shall be given until the whole of the purchase-money of said tract shall be paid to said parties of the second part, or their successors or survivor, in cash or in said bonds, or overdue coupons thereof. And for this purpose it is agreed that the said party of the first part and said trustees shall cause all such lands, as they shall from time to time become subject to sale, to be carefully examined and surveyed, and shall affix to each tract or parcel such price as in their judgment shall be most judicious, having in view the interests of all parties; and said lands shall be and remain at all times thereafter open for sale to any person who may desire to purchase and pay therefor; the prices being, nevertheless, at all times subject to revision and alteration by the said parties; and the party of the first part may reserve from sale any lands necessary for depot grounds, or other purposes connected with the construction or operation of the said railroad or telegraph.

The purchaser of any such land shall be at liberty to pay for the same in the aforesaid bonds or overdue coupons at par; and when any tract or parcel of said lands shall have been purchased and paid for, either in bonds, coupons, or cash, as hereinbefore provided, the same shall be conveyed by the said parties of the first and second parts to the purchaser, in fee simple, and shall by such conveyance be absolutely and forever released from any and all lien or incumbrance, for or on account of said bonds, or any other debt or obligation of the said party of the first part.

Provided, That for the sake of convenience in making said conveyances the said trustees shall have power to act by attorney, duly nominated and appointed by them, jointly, by letter of attorney, which shall be duly acknowledged and recorded in each and all of the counties in which said lands, or any part thereof, are situated; and all deeds made in their names by such attorney shall have the same force and effect as if made by them in person.

Provided, further, That the attorney so appointed shall be a resident of the city of San Francisco, in the State of California, and shall reside within convenient reach of the party of the first part.

The said trustees shall and will cancel and discharge each and every bond and the coupons thereon, and all overdue coupons, which they may receive in payment for land, or by purchase, by defacing the seal of the corporation, perforating the signature of the president and secretary, and drawing lines across each of the interest coupons, on receipt thereof, and all bonds and coupons received in payment for lands as aforesaid shall, when so cancelled, be delivered to the said party of the first part.

The said trustees shall apply the proceeds of the sales made by them of lands hereby conveyed to the sole and exclusive purpose of the payment of the bonds provided for in, and issued in conformity to, the terms of this indenture.

And for such purpose all such avails shall, from time to time, as the same are realized, be used in the purchase of such bonds in the market, to be cancelled, so long as purchases thereof can be made at par; and whenever such bonds cannot be purchased at that rate said trustees shall advertise for proposals to sell such bonds to them in two newspapers published in the city of New York, and one newspaper published in the city of San Francisco; and after receiving such proposals they shall have power to purchase such bonds at the lowest terms so offered.

The said party of the first part does hereby covenant and agree to pay to the holders of said bonds, respectively, the said principal sums of money therein mentioned, and the interest thereof, as aforesaid.

If any default shall be made in the payment, either of principal or interest on any of said bonds for six months after demand at the place of payment when the same shall become due, then the said trustees may, on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into and take possession of any of the lands above conveyed and foreclose this mort-
44 gage, and may sell at public auction so much of said lands as may be necessary to discharge all arrears of such interest, and apply the proceeds, after deducting the costs, charges, and expenses of such entry, foreclosure and sale, to the payment of such arrears of interest. If any such default shall continue for one year from the time of such demand and refusal the principal sum of all bonds then outstanding shall become due and payable, and the said trustees may enter into and take possession of all the lands above by these presents mortgaged or conveyed, foreclose this mortgage, and sell at public auction all said lands, or so much thereof as may be necessary, first giving at least six months previous notice of the time and place of sale in at least one newspaper published in the city of New York, and in one published in each of the cities of San Francisco, Sacramento, Los Angeles, and San Diego, and they shall apply the proceeds thereof, after deducting the costs, charges, and expenses of such last-mentioned entry, foreclosure, and sale to the payment of all said bonds then outstanding, and the interest accrued thereon, rendering the surplus, if any there shall be, unto the said party of the first part. In case of any sale upon any such foreclosure, or at any such public auction, the said trustees shall make, execute, and deliver a conveyance of the said lands so sold, which shall convey to the purchasers all the rights and privileges of the said party of the first part in and to the property so sold to the same extent as the same shall have been previously enjoyed and held by the said party of the first part.

If after any such entry shall be made, or any such foreclosure proceedings shall be commenced for the satisfying of interest only, as above provided, and before the lands are sold thereon, the said party of the first part shall pay and discharge such interest and deliver the coupons therefor to the said trustees, and pay all the costs, charges, and expenses incurred in such entry and foreclosure and the proceedings thereon; then and in every such case the said trustees shall discontinue their proceedings thereon, and restore to the

said party of the first part all of such lands to be held subject to the above conveyance and mortgage, and subject to all the provisions, terms, and conditions of these presents, in like manner as if such entry had not been made nor such foreclosure proceedings commenced. In case a vacancy shall happen in the number of trustees hereinbefore mentioned as parties of the second part in this indenture, or if one of them shall be temporarily absent, the remaining trustee shall, while said vacancy or absence exists, have all the rights, exercise all the powers, and discharge all the duties devolving on the said trustee by said instrument. But as soon as it conveniently may be done, such vacancy shall be filled by the nomination by the remaining trustee of some proper person to fill such vacancy, which nomination shall be submitted to the board of directors of said company, and, if approved by them, the person so nominated and approved immediately shall become a trustee under this instrument. If said nomination is not approved, another person shall be nominated by said remaining trustee, and in like manner submitted for approval, and so on till three nominations shall have been made. But if three successive nominations shall be made and none of them shall be approved by said board, said vacancy shall be filled by a committee of three persons, selected, one by said remaining trustee, one by said board of directors, and a third by the two thus selected, and the person appointed trustee by a majority of the committee shall be and remain a trustee under this instrument. And the person regularly appointed a trustee to fill a vacancy in either of the forms above specified shall, from and after his said appointment, and his acceptance of the appointment, become vested with the same estates, powers, rights, and interests, and charged with the same duties and responsibilities as if he had been one of the original trustees, parties of the second part, named in and executing this instrument; and the prior remaining trustee may and shall execute such conveyances and instruments as may be proper or necessary to vest the same in such new trustee jointly with him, or to furnish evidence of such vesting. If at any time either of the said trustees shall resign his place as trustee by a proper deed in writing to that effect, and such resignation shall be accepted by the said party of the first part, then, and in every such case, the place of such resigning trustee thereupon shall become and be vacant.

Whenever all the bonds which shall have been made and issued by the said party of the first part under and in conformity to the provisions of this indenture, with the interest thereon, together with all the expenses incurred by the said trustees in the execution of the trust herein and hereby created shall have been fully paid or satisfied, the said trustees shall reconvey to the said party of the first part all and singular the said lands then in the hands of the said trustees, and not before that time sold or disposed of, in the execution of the trust hereby created. In case the said trustees shall at any time have any trust moneys on hand received from the sale of the lands hereby conveyed which will not be required to meet any immediate liabilities of the company, to which said moneys are by these presents devoted, the said moneys shall be loaned on interest,

or deposited on interest, with some bank or trust company in the city of San Francisco or Sacramento, subject to be drawn by checks signed by the trustees, or such one of them as they may designate. All of the books of the said company, and of the trustees, relating to the lands hereby conveyed, shall be mutually open to the inspection of said company and said trustees. It shall be the duty of the said trustees to certify and deliver to the said party of the first part the said bonds, as the same from time to time shall be demanded, issued, or used by the said party of the first part.

And it is hereby mutually agreed by and between the parties hereto that the said parties of the second part, and their survivor and successors, and their heirs, executors, and administrators, shall not be answerable for the acts, omissions, or defaults of each other, nor for anything short of their own gross negligence or wilful misfeasance.

It is hereby declared by the parties to this indenture that all the provisions of said acts of Congress, so far as they are applicable, are hereby made and shall be deemed and taken to be a part of this instrument; and the said provisions in all that concerns the sale and disposal of the said lands hereby conveyed to the parties of the second part are to be observed and strictly and faithfully carried out and fulfilled.

And the said party of the first part covenants and agrees to and with the said parties of the second part, that the said party of the first part shall and will at any and all times hereafter, and from time to time execute, acknowledge, and deliver, under its corporate seal, to the said parties of the second part, and their survivors or successors, all such other or further assurances, deeds, mortgages, obligations, transfers, indentures, and instruments in writing, and shall and will do and perform all such other or further acts or things as shall or may be necessary or proper, or as their counsel, learned in the law, shall deem necessary, proper, or expedient for the better or more effectually securing upon the above conveyed and mort-
45 gaged premises the payment of the said bonds so to be issued, and the interest due and to grow due thereon in manner aforesaid, or for carrying into effect the true intent, design, objects, and purposes of these presents. And the said parties of the second part hereby accept the trust created and declared by this instrument, and agree to discharge the same pursuant to the provisions in that behalf herein contained.

In witness whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its president and secretary, and sealed with its corporate seal, and the above parties of the second part have hereunto set their hands and seal, the day and year first above written.

CHARLES CROCKER,
President Southern Pacific Railroad Company.

[SEAL.]

J. L. WILLCUTT,
Secretary Southern Pacific Railroad Company.

We accept the trust declared in the foregoing instrument.

D. O. MILLS, [SEAL.]
LLOYD TEVIS, [SEAL.]
Trustees.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

On this third (3rd) day of July, in the year one thousand eight hundred and seventy-five (1875), before me, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the president of the Southern Pacific Railroad Company, and J. L. Willcutt, known to me to be the secretary of the Southern Pacific Railroad Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 3rd day of July, A. D. 1875.

[SEAL.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

I, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, residing in the city of San Francisco, duly commissioned and sworn, do certify that on the sixth (6th) day of July, in the year one thousand eight hundred and seventy-five (1875), personally appeared before me in the city and county of San Francisco, State of California aforesaid, Charles Crocker, president of the "Southern Pacific Railroad Company," and J. L. Willcutt, secretary of the "Southern Pacific Railroad Company," who are both personally known to me to be the said officers of the said "Southern Pacific Railroad Company," respectively, and the individuals described in and who have executed the foregoing instrument as such officers of said company, and they each severally and personally, then and there, acknowledged to me that they executed the said instrument as the free act and deed of the said "Southern Pacific Railroad Company" freely and voluntarily, and for the uses and purposes therein mentioned; and the said J. L. Willcutt, with whom I am personally acquainted, being by me duly sworn, did depose and say that he resides in the city and county of San Francisco, State of California; that he is and was secretary of the "Southern Pacific Railroad Company" at the date and time he executed the foregoing instrument; that he knows the corporate seal of said company, and is, and was at the date of said instrument, the legal custodian of said seal; that the seal affixed to the foregoing instrument was and is such corporate seal, and was by him so affixed by order of the board of directors of the said "Southern Pacific Railroad Company;" that he signed his name thereto as secretary of said company by the like order. And the

said J. L. Willcutt further said that he was and is acquainted with Charles Crocker, and knows that said Charles Crocker is and was president of the "Southern Pacific Railroad Company" at the date of said instrument; that the signature of the said Charles Crocker subscribed to said instrument is in the genuine handwriting of the said Charles Crocker, and was thereto by him subscribed by the like order of the board of directors of said company, and in the presence of him, the said deponent.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, the 6th day of July, A. D. 1875.

[SEAL.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

On this seventh (7th) day of July, in the year one thousand eight hundred and seventy-five (1875), before me, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared D. O. Mills and Lloyd Tevis, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, this 7th day of July, A. D. 1875.

[SEAL.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

46 Filed for record at the request of D. W. Parkhurst, and recorded in office of the county recorder of San Mateo county, July 8th, 1875, at 5 p. m., in liber 11 of Mortgages, at page 2 and following.

Witness my hand and seal of office.

[SEAL.] Paid $22.50. GEO. H. RICE,
County Recorder,
By W. R. THOMAS, *Deputy.*

Filed for record at the request of D. W. Parkhurst, July 9th, A. D. 1875, at 9 o'clock and 26 minutes a. m., and recorded in book 15 of Mortgages, at page 156 *et seq.*, records of the county of Santa Clara, in the State of California.

Witness my hand and seal of office.

[SEAL.] Paid $15. W. J. COLAHAN,
County Recorder,
By F. J. SAXE, *Dep't.*

Filed for record at the request of D. W. Parkhurst, July 9th, A. D. 1875, at 8 o'clock and 43 minutes p. m., and recorded in book 1

of Mortgages, at page 586 and following, records of San Benito county, in the State of California.

Witness my hand and seal of office.

[SEAL.] Fees, $15, paid. H. M. HAYES,
Co. Recorder.

Filed for record at the request of D. W. Parkhurst, July 10th, A. D. 1875, at 8 o'clock and 10 minutes p. m., and recorded in volume 17, page 529, and following pages of the mortgage records of the county of Santa Cruz, in the State of California.

Witness my hand and seal of said county recorder.

[SEAL.] Paid $15.00. H. E. MAKENNEY,
County Recorder in and for Santa Cruz County.

Filed for record at the request of D. W. Parkhurst, July 12th, A. D. 1875, at 9 o'clock and 55 minutes a. m., and recorded in Book 1 of Mortgages, page 183 and following, records of the county of Monterey, in the State of California.

Witness my hand and seal of office.

[SEAL.] Fees, $15, p'd. HERBERT MILLS,
County Recorder.

Filed for record at the request of D. W. Parkhurst, July 13th, A. D. 1875, at six o'clock and 25 minutes p. m., and recorded in Book "C" of Mortgages, page 540 *et seq.*, records of the county of San Luis Obispo, in the State of California.

Witness my hand and seal of office county recorder.

[SEAL.] Fees, $15. CHAS. W. DANA,
County Recorder.

Filed for record at the request of D. W. Parkhurst, July 14th, A. D. 1875, at 2 o'clock and 20 minutes p. m., and recorded in Book "F" of Mortgages, pages 164 and following, records of the county of Santa Barbara, in the State of California.

Witness my hand and seal of office of county recorder.

[SEAL.] Fees, $15, p'd. H. P. STONE,
County Recorder,
By J. O. B. WENTLING,
Deputy.

Filed for record at the request of D. W. Parkhurst, July 16th, A. D. 1875, at 8 o'clock and 40 minutes a. m., and recorded in Book 15 of Mortgages, page 600 *et seq.*, records of the county of Los Angeles, in the State of California.

Witness my hand and seal of office county recorder.

[SEAL.] Fees, $15, p'd. J. W. GILLETTE,
County Recorder,
By D. S. LOVEJOY,
Deputy.

Filed for record at the request of D. W. Parkhurst, July 19th, A. D. 1875, at nine o'clock and 15 minutes a. m. and recorded in Book

Volume 2 of Mortgages, pages 217 and following, records of the county of Kern, in the State of California.

Witness my hand and seal of office.

[SEAL.] Fees, $15, p'd. F. W. CRAIG,
County Recorder.

47 Filed for record at the request of D. W. Parkhurst, Esq., July 20th, A. D. 1875, at 8 o'clock and 15 minutes p. m., and recorded in Book D of Mortgages, pp. 310 *et seq.*, records of the county of Fresno, in the State of California.

Witness my hand and seal of office of county recorder.

[SEAL.] P'd $15. A. M. CLARK, *County Recorder,*
By C. L. WAINWRIGHT, *Deputy.*

Filed for record at request of D. W. Parkhurst, July 21st, A. D. 1875, at 10 o'clock and 30 minutes a. m., and recorded in Book "K" of Mortgages, page 1 *et seq.*, records of the county of Tulare, in the State of California.

Witness my hand and seal of office of county recorder.

[SEAL.] P'd $15. J. E. DENNY, *Recorder,*
By JOHN G. KNOX, *Deputy.*

Filed for record at the request of D. W. Parkhurst, July 23d, A. D. 1875, at 10 o'clock and 40 minutes p. m., and recorded in Book "D" of Mortgages, 544 *et seq.*, records of the county of San Bernardino, in the State of California.

Witness my hand and seal of office of county recorder.

[SEAL.] P'd $15.00. SYDNEY P. WAITE,
County Recorder,
By R. S. SWING, *Deputy.*

Filed for record at the request of D. W. Parkhurst, July 26th, A. D. 1875, at 10 o'clock and 20 minutes a. m., and recorded in Book No. 7 of Mortgages, pages 103 *et seq.*, records of the county of San Diego, in the State of California.

Witness my hand and seal of office of county recorder.

[SEAL.] Fees, $15. A. S. GRANT,
County Recorder,
By E. G. HAIGHT, *Deputy.*

Filed for record at the request of D. W. Parkhurst, July 28th, A. D. 1875, at 24 minutes past 4 p. m., and recorded in Book No. 2 of Mortgages, pages 46 *et seq.*, records of the county of Ventura, State of California.

Witness my hand and seal of office of county recorder.

[SEAL.] Fees, $18. JOHN T. STOW,
County Recorder.

Recorded at request of D. W. Parkhurst, August 3rd, A. D. 1875, at 1 p. m., in Liber 443 of Mortgages, page 309, in the office of the county recorder of the city and county of San Francisco, State of California.

[SEAL.] O. H. FRANK,
County Recorder.

Recorded at request of Wells, Fargo & Co., August 20, 1880, at 20 min. past 9 a. m., in Book 1 of Mortgages, page 557 *et seq.*, records of Merced county.

[SEAL.] $15.

E. J. HAMILTON,
County Recorder,
By M. H. WALSH, *Deputy.*

Recorded at request of Wells, Fargo & Co., August 23d, A. D. 1880, at 5 min. past 9 o'clock a. m., in Vol. 15 of Mortgages, at pages 139 *et seq.*, records of Stanislaus county.

[SEAL.] $15 paid.

JOHN McCOY, *Recorder.*

Recorded at request of J. L. Willcutt, September 6th, 1880, at 30 min. past 10 o'clock a. m., in Liber 624 of Mortgages, page 305, in the office of the county recorder of the city and county of San Francisco, State of California.

[SEAL.]

W. K. DIETRICH,
County Recorder,
Per RICHARD BLAUVELT, *Deputy.*

48 Endorsed: Due service of the within amended answer admitted this 27th day of July, 1883. D. S. & L. S. Terry, attorneys for plaintiff. Filed July 27th, 1883. L. S. B. Sawyer, clerk.

Stipulation Waiving Jury.

49 At a stated term, to wit, the July term, A. D. 1883, of the circuit court of the United States of America of the ninth judicial circuit, in and for the district of California, held at the court-room, in the city and county of San Francisco, on Tuesday, the 31st day of July, in the year of our Lord one thousand eight hundred and eighty-three.

Present: The Honorable S. J. Field, circuit justice; the Honorable Lorenzo Sawyer, circuit judge.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY. } No. 2846.

50 It is hereby stipulated by and between the above-named parties, that the above-named action be tried by and before the court without a jury, a jury being hereby expressly waived.

Dated San Francisco, July 31, 1883.

D. S. & S. L. TERRY,
Att'ys for Plaintiff.
P. D. WIGGINTON,
H. S. BROWN,
Attorneys for Defendant.

E. C. MARSHALL, *Att'y Gen'l.*

Endorsed: Filed July 31, 1883. L. S. B. Sawyer, clerk.

51 *Findings.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY. } No. 2846.

The above-entitled cause having, on the 31st day of July, 1883, been brought on to a hearing before the court, without a jury, the said parties, by stipulation in writing filed with the clerk, having waived a jury, and the evidence introduced by the respective parties have been fully considered, the court finds the facts in issue in said action as follows:

I.

Defendant's organization.

In the year 1865 a corporation, under the name of the Southern Pacific Railroad Company, was duly organized under an act of the Legislature of the State of California, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies, and the management of the affairs thereof, and other matters relating thereto," and the term of its existence was fixed at fifty years from the date of its organization.

II.

On the 24th day of July, 1860, the San Francisco and San Jose Railroad Company was duly incorporated under the laws of the State of California.

III.

The Legislature of California, on April 2, 1866, passed an act entitled "An act to authorize all the counties south of Santa Clara county to aid in the construction of the Southern Pacific rail-
52 road," which statute is found in the statutes of 1865–'6 at page 816 *et seq.* Also a statute, on March 30, 1868, entitled "An act to confer power upon the board of supervisors of the city and county of San Francisco," which is found in the statutes of California for the years 1867–'8 at page 716. Also "An act to empower the city and county of San Francisco to aid in the construction of the Southern Pacific railroad, and other purposes," which is found in the statutes of California, 1869–'70, at page 707 *et seq.* All of which statutes are herein referred to and made a part of these findings.

IV.

On July 27, 1866, Congress passed an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," which act of Congress is found in the United States Statutes at Large, vol. 14, at page 292 *et seq.*, and which act is herein referred to and made a part of this finding.

V.

In November, 1866, the Atlantic and Pacific Railroad Company duly filed its acceptance of said act of Congress in the office of the Secretary of the Interior.

VI.

On the thirtieth day of November, 1866, said Southern Pacific Railroad Company duly filed, in the office of the Secretary of the Interior, at Washington, its acceptance of the said act of Congress of July 27, 1866.

VII.

The Legislature of the State of California, on April 4, 1870, passed an act entitled "An act to aid in giving effect to an act of Congress relating to the Southern Pacific Railroad Company," which act is found in the statutes of California for 1869–'70 at pages 883, and is hereby referred to and made a part of this finding.

VIII.

On March 3, 1871, Congress passed an act entitled "An act to incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," which statute is found in vol. 16, U. S. Statutes at Large, at page 573 *et seq.*, and which is hereby referred to and made a part of this finding.

IX.

On May 2, 1872, Congress passed "An act supplementary to an act entitled 'An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other
53 purposes,' approved March 3, 1871," which act is found in vol. 17, U. S. Statutes at Large, page 59 *et seq.*, which statute is hereby referred to and made a part of this finding.

X.

As such corporation, and in pursuance of the acts of the Legislature of California and acts of Congress referred to in these findings, said Southern Pacific Railroad Company constructed a line of railroad, and procured the rolling-stock and all the appurtenances thereunto belonging, known and designated as the Southern Pacific railroad, described as follows: Commencing on the waters of the Pacific Ocean in the city and county of San Francisco, and extending in a southerly direction through portions of the county of San Francisco, and through the county of Santa Clara to Tres Pinos, in the county of San Benito, with a branch therefrom running from Carnadero, in the county of Santa Clara, to Soledad, in the county of Monterey. Said line of railroad also extends from Huron, in Fresno county, to Goshen, in Tulare county, and thence in a southerly direction, by the way of Tehachapi Pass, Mohave, and Los Angeles, to the Colorado river at Fort Yuma, with three branches from said

line at Los Angeles, extending, respectively, to Santa Monica, Wilmington, and Santa Ana, in the county of Los Angeles. Said line of railroad is connected with the Texas and Pacific railroad at Sierra Blanca, in the State of Texas, by three railroads, to wit: The Southern Pacific railroad (of Arizona), extending from Fort Yuma to the eastern boundary line of Arizona; the Southern Pacific railroad (of New Mexico), extending from said eastern boundary-line across New Mexico to the western boundary of Texas; and the Galveston, Harrisburg and San Antonio railroad, extending from said last-named boundary to Sierra Blanca. Said several railroads are operated as one continuous line, except the connection made over the Central Pacific road, as stated in finding No. XXXIII, from a point near Marshall, in Texas, to the Pacific Ocean at San Francisco, for the uses and purposes and in the manner contemplated by the acts of Congress hereinbefore referred to. From Tres Pinos to Huron the said Southern Pacific railroad has not been completed, but pending its construction connection between said points is made over the line of the Central Pacific railroad. Defendant, since the commencement of this action, has completed the construction of the said Southern Pacific railroad to the Colorado river, at or near the Needles, to connect with the Atlantic and Pacific railroad, hereinafter referred to, and, with the said Atlantic and Pacific railroad, when completed, making a continuous line from Springfield, in the State of Missouri, to the Pacific Ocean, with the same exceptions as to the connection over the Central Pacific, as contemplated by the act of Congress, hereinbefore referred to, chartering the Atlantic and Pacific Railroad Company.

54 XI.

Length of the road in the several counties.

Of said Southern Pacific railroad (of California) there had been, prior to the first Monday in March, 1880, completed, and there was in operation in the several counties through which it runs, 711.51 miles, to wit: In the city and county of San Francisco, 7.36 miles; in the county of San Mateo, 25.10 miles; in the county of Santa Clara, 59.30 miles; in the county of Santa Cruz, 2.15 miles; in the county of San Benito, 17.65 miles; in the county of Monterey, 49.28 miles; in the county of Fresno, 17.93 miles; in the county of Tulare, 61.98 miles; in the county of Kern, 117.83 miles; in the county of Los Angeles, 139.48 miles; in the county of San Bernardino, 54.60 miles, and in the county of San Diego, 158.85 miles, and all within the State of California.

XII.

Said Atlantic and Pacific Railroad Company has nearly completed, and will within a short time have fully completed, the whole of said road from Springfield to the Colorado river, and defendant has constructed said road as aforesaid to Mojave, with the exception hereinbefore set out, and has completed the construction thereof from said Mojave to the junction of the road of the Atlantic and Pacific Company at Colorado river.

XIII.

On December 17th, 1877, the Southern Pacific Railroad Company and the Los Angeles and San Pedro Railroad Company, San Francisco and San Jose Railroad Company, and other railroad corporations, then duly incorporated and existing under the laws of the State of California, were duly amalgamated and consolidated under the provisions of the statutes of California, and a new corporation was formed, to wit, the defendant in this action. Since then said defendant has been and still is a corporation existing under the laws of the State of California, except in so far as its organization, existence, corporate character, and rights may be affected or modified by the Federal and State statutes, referred to in these findings.

XIV.

Within due time the secretary of the defendant filed with the State Board of Equalization the sworn statement required by section 3664 of the Political Code of California.

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XV.

Assessment of State board not given in evidence on trial.

No record of assessment as made by said State Board of Equalization was introduced as evidence on the trial; and there was no other evidence as to the assessment in question than as shown by the documents set out in these findings, or as shown by the facts stated in the findings.

XVI.

The following is a copy of the assessment roll for the county of Fresno for the year 1881, so far as it relates to the tax in question in this case, and includes said tax, and is the only evidence of the assessment of said tax, no other record of the assessment as made by the State Board of Equalization having been introduced, to wit:

Original.—Assessment Book of the property of Fresno County for the year 1881. *Assessed to all known owners or claimants, and when unknown to unknown owners or claimants.*

Taxpayer's Name.	Description of Property. Real estate other than city and town lots. Subdivision of sections or metes and bounds. City and town lots. Improvements. Personal property.	Value of the franchise, roadway, road bed, rails, and rolling-stock of railroads as apportioned to the county by the State Board of Equalization.	Total value of all property after deductions. (Changes by the county boards of equalization to be noted in red ink.)	Total value after equalization by the State Board of Equalization.	Total tax.	Remarks.
Southern Pacific Railroad Company.	Office of the State Board of Equalization, Sacramento, *May* 14, 1881. To W. H. McKenzie, *Assessor of Fresno County.* Sir: The State Board of Equalization on the 2nd day of May, 1881, assessed for the year 1881, the Southern Pacific Railroad Company for its franchise, roadway, road-bed, rails, and rolling-stock, in the State of California, in the aggregate sum of $11,739,915. The entire line of main track of said railroad of said company in the said State is 711.51 miles. The length of the main track of said railway in Fresno county is 17.93 miles. The description of the whole of the main track of the railway of the said Southern Pacific Railroad Company, and the right of way for the same, in the county of Fresno, is as follows: Beginning at the town of Huron and running easterly in the direction of Goshen in Tulare county to the east line of Fresno county. The assessed value per mile of said railway, as fixed by a *pro rata* distribution per mile of the assessed value of the whole franchise, roadway, road-bed, rails, and rolling-stock of such railway of the said company within this State is $16,500. The apportionment of the assessment of the said franchise, roadway, road-bed, rails, and rolling-stock, by this board, for and to Fresno county, is $295,845. WARREN DUTTON, *Chairman*, M. M. DREW, D. M. KENFIELD, T. D. HEISKELL, *State Board of Equalization.* E. W. MASLIN, *Clerk.*	$ 295,845	$ 602,869	$ 602,869	$ cts. 10,246 78	

(Duly certified by the auditor.)

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XVII.

The board of supervisors of Fresno county duly apportioned said tax among the legal subdivisions of said county.

XVIII.

The delinquent list for the said year, so far as it relates to the tax in question, was duly made up in form corresponding with the original assessment roll.

XIX.

In pursuance of section 3738 of the Political Code of California, the board of supervisors of Fresno county duly passed an order, entered in the minutes, dispensing with the duplicate assessment roll for that county for that year.

XX.

The controller of the State transmitted a letter to the tax collector of Fresno county, in pursuance of the provisions of section 3899 of the Political Code, directing the tax collector of Fresno county to offer the property in question for sale but once, and if there were no *bona fide* purchasers to withdraw it from sale.

XXI.

On or about the eleventh day of April, A. D. 1881, the tax collector of the county of Fresno, in obedience to the provisions of section 3899 of the Political Code of California, transmitted to the controller of the State of California, with his indorsement thereon of the action had in the premises, a certified copy of the entry upon the delinquent list relative to the tax in question in this action. Said indorsement shows that said tax collector had offered said property for sale and withdrawn it because there was no purchaser for the same.

XXII.

The controller of State, in pursuance of the provisions of the same section, transmitted to the tax collector of said county a letter directing him to bring suit.

XXIII.

Indebtedness of defendant secured by mortgage.

On the first day of April, 1875, the defendant was indebted to divers persons in large sums of money advanced to construct and equip the defendant's railroad hereinbefore described. To secure the payment of such indebtedness the defendant, on the said first day of April, 1875, executed and delivered a mortgage to D. O. Mills and Lloyd Tevis upon said Southern Pacific railroad, its franchises, and all rolling-stock and appurtenances, and upon a large number of tracts of land, aggregating over eleven million acres, situated in different
57 counties in the State of California, which said tracts of land were, and ever since have been, the property of the defendant,

and which said indebtedness amounts to the sum of $32,520,000, no part of which has ever been paid, except the accruing interest; and the sum of $1,632,000 of the principal and the whole of the balance of said principal sum, amounting to $30,898,000, is, and ever since the execution of said mortgage has been, a valid and subsisting indebtedness against said company, and has been, and still is, secured by said mortgage, a copy of which, with the indorsement thereon, is annexed to the answer in this case, which is hereby referred to and made a part of this finding, which said mortgage was duly recorded on the date mentioned in the indorsement thereon, in the county of Fresno, as well as in all other counties through which said railroad runs, as shown by the several indorsements thereon.

XXIV.

At the session of the Legislature of 1881 a bill was introduced in the Assembly of said Legislature, of which the following is a true copy, and that such proceedings were thereupon had in said Legislature as are hereinafter set forth. Said bill was an amendment to section 3664 of the Political Code of the State of California, which section, prior to said amendment, read as follows, to wit:

SECTION 3664. "On or before the first Monday in May, in each year, the State Board of Equalization shall assess the franchise, roadway, road-bed, rails, and rolling-stock of railroads operated in more than one county. The president, secretary, cashier, or managing agent, or such other officer as the State Board of Equalization may designate, of any corporation operating any railway in more than one county in this State, shall furnish said board, on or before the first Monday of April in each year, a statement, signed and sworn to by one of such officers, showing in detail for the year ending on the first Monday in March in such year:

(*a.*) The whole number of miles of railway owned, operated, or leased in the State by such corporation making the return, and the value thereof per mile, with a detailed statement of all property of every kind located in the State.

(*b.*) Also a detailed statement of the number and value thereof of engines, passenger, mail, express, baggage, rolling-stock in use on the corporation's line in the State during the year for which the return is made. The return shall show the amount of rolling-stock, the annual gross earnings of the entire railway, and the proportionate annual gross earnings of the same in this State, as nearly as practicable, and all the property designated hereafter in this section, and such other facts as the State Board of Equalization may in writing require.

If such officer or officers so designated shall fail to make and furnish such statement, said Board of Equalization shall fix the value of and proceed to assess the property of the corporation so failing; the valuation fixed by them shall be final and conclusive.

The said property shall be assessed at its actual value.

58 Assessments shall be made upon the entire railway within the State, and shall include the right of way, road-bed, track, bridges, culverts, and rolling-stock. The depots, station grounds,

shops, buildings, and gravel-beds, shall be assessed by the assessor of the county where situated as other property. On or before the fifteenth day of May in each year said board shall transmit to the county assessor of each county through which any railway, operated in more than one county, may run, a statement showing the length, of the main track, or tracks, of such railway within the county, together with a description of the whole of said tracks within the county, including the right of way by metes and bounds, or other description sufficient for identification, and the assessed value per mile of the same, as fixed by a *pro rata* distribution per mile of the assessed value of the whole franchise, roadway, road-bed, rails, and rolling-stock of such railway within this State.

Said statement shall be entered on the assessment roll of the county. At the first meeting of the board of supervisors, after such statement is received by the county assessor, they shall make and cause to be entered in the proper record book an order stating and declaring the length of the main track, and the assessed value of such railway lying in each city, town, township, school district, or lesser taxing district in their county through which such railway runs, as fixed by the State Board of Equalization, which shall constitute the taxable value of said property for taxable purposes in such city, town, township, school, road, or other district; and the clerk of the board of supervisors shall transmit a copy of each order or equalization to the city council or trustees, or other legislative body of incorporated cities or towns, the trustees of each school district, and the authorized authorities of other taxation districts through which such railway runs. The taxes on said property, for State and county purposes, after collection by the county collector, shall be paid over to the county treasurer as other taxes. All such railway property shall be taxable upon said assessment, at the same rates, by the same officers, and for the same purposes as the property of individuals within such counties, cities, towns, townships, school districts, and lesser taxation districts."

And the said amendment is in the following words:

"respectively, any person dissatisfied with an assessment made by said Board of Equalization against his or its property may, within five days after such assessment is made and entered of record on the books of said board, by written petition apply to said board to have the same corrected in any particular. Said petition must state the grounds of objection to such assessment, and must be filed with the clerk of the board. The board must fix a time for hearing said petition, which must not be less than five nor more than ten days from the time the same is filed, and must, upon such hearing, receive such proofs as may be offered by the petitioner, or by the attorney general, or any other person appearing against such petition, and such other proofs as, in the judgment of the board, bear upon the question at issue. By an order of the board or upon the demand of the petitioner, the proofs shall be reduced to writing by a phonographic reporter. If the board do not order the proofs to be reduced to writing by such reporter, but the same

is done upon the demand of the petitioner, the petitioner must pay the expenses thereof. After hearing such proofs
59 the board shall, within ten days, determine, in writing, upon the matters involved in the petition and proofs, and may alter, in conformity with such determination, the assessment complained of. Any person feeling aggrieved at such determination who shall pay the tax upon the assessment complained of, and may, within ten days after such payment, bring an action in the superior court, in the county in which the tax, or any part thereof, has been paid against the Board of Equalization, and in the complaint may allege any fact averred in his petition, filed with said board, showing the illegality of such tax in whole or in part, or that the property, in whole or in part, was assessed for more than its actual value.

A copy of the complaint must, within thirty days after it has been filed, be served upon the chairman or clerk of said board, and said board shall have thirty days in which to answer or demur to the same. At the time the board answers or demurs it may demand that the suit be tried in the superior court of Sacramento county.

The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials, and appeals shall be applicable to the proceedings herein provided for, and the testimony taken before the Board of Equalization may be read in evidence; and in such proceeding the court shall have power to determine the matters involved in the issue, and, in making such determination, may ascertain whether the property was taxed or assessed in proportion to its value, and if the determination is in favor of the petitioner, as to the illegality of the tax, in whole or in part, in excess of its actual value, it shall, by its judgment, direct the return of the tax paid, or of such part thereof as may have been illegally exacted, or exacted in excess of the actual value of the property.

Upon presentation of a certified copy of such final judgment to the controller he shall draw his warrant upon the State treasurer for the amount of such judgment, and the treasurer shall pay the same out of any funds in the State treasury not otherwise appropriated. At the next settlement, made thereafter by the controller with the county treasurer of any county that received any portion of said illegal tax, he shall require the treasurer thereof to pay such portion into the State treasury, to reimburse the State for the advance made on said judgment. The Board of Equalization may direct the district attorney of any or every county interested, and the attorney general, to defend for such board any proceedings commenced under the provisions of this section."

The said amendatory bill was entitled "An act to amend an act to establish a political code, approved March 12, 1872, by adding thereto two new sections, to be known as sections 3664 and 3665, relating to the assessments of the railroads and other property by the State Board of Equalization and county assessors for the purposes of taxation." Said bill, in the due course of business, was passed by the Assembly, and contained all the matter which is found in said section 3664, as first above quoted.

Having passed the Assembly, the bill was transmitted to the Sen-

ate. The Senate amended section 3664 by adding thereto the latter portion of the matter hereinbefore quoted. Upon the return
60 of the bill to the Assembly the following proceedings were had, as appears on the Journal of that body:

"The consideration of Senate amendment to Assembly bill No. 475, 'An act to amend an act entitled an act to establish a political code,' approved March 12, 1872, by adding thereto two new sections, to be known as sections 3664 and 3665, relating to assessments of railroads and other property by the State Board of Equalization and county assessors for the purpose of taxation," resumed.

"The previous question was demanded by Messrs. Edwards, Jackson, and Paulk.

"The ayes and noes were demanded by Messrs. Paulk, Whipple, and Del Valle.

"The roll was called, and the House refused to order the main question, by the following vote:

"Ayes: Messrs. Arick, Brown, Burns, Cameron, Crank, Daggett, Edwards, Gay, Geary, Gilmore, Hartshorn, Hoitt, Holden, Jackson, Jones, Kellogg, Kilburn, Lane, May, McCallion, McClure, McDonald, Mein, Mudgett, Noonan, Patterson of San Joaquin, Reddick, Reynolds, Streeter, Swift, Wasson of Ventura, Wasson of Mono, Young, and Mr. Speaker—34.

"Noes: Messrs. Baker of Sacramento, Baker of Yolo, Birney, Bost, Branch, Chandler, Colman, Crumpton, Cunningham, Del Valle, Felton, Fraser, Freer, Garrity, Gavigan, Griffith, Hale, Hendrick, Henshaw, Howard, Keating, Leach, Leake, Lewis, Long, Matthews of Tehama, Matthews of San Benito, McMurray, Murphy, O'Connor, Patterson of Nevada, Paulk, Pinder, Platt, Samuels, Sargent, Siebe, Van Fleet, Wentz, Wertsbaugher, Whipple, and Wood —42."

After the transaction of other business, the printed Journal proceeds:

"The consideration of Senate amendment to Assembly bill 475 resumed.

"The question recurred on concurring therewith.

"The ayes and noes were demanded by Messrs. Paulk, Sargent, and Wentz.

"The roll was called, and the Speaker declared the House had concurred in the Senate amendments:

"Ayes: Messrs. Arick, Baker of Sacramento, Birney, Bost, Brown, Burns, Crank, Daggett, Edwards, Estee, Felton, Garrity, Gavigan, Geary, Gilmore, Hartshorn, Hoitt, Holden, Howard, Jackson, Keating, Kellogg, Laine, Mason, May, McCallion, McClure, McDonald, Mein, Noonan, O'Connor, Patterson of San Joaquin, Pinder, Reddy, Streeter, Swift, Van Fleet, Warkins, Wasson of Mono, Young, and Mr. Speaker—39.

"Noes: Messrs. Alviso, Baker of Yolo, Branch, Chandler, Colman, Cunningham, Del Valle, Fraser, Gay, Griffith, Hale, Hendrick, Henshaw, Jones, Leake, Leach, Lewis, Long, Matthews of San Benito, McMurray, Murphy, Patterson of Nevada, Paulk, Platt, Reynolds

Samuels, Sargent, Siebe, Wasson of Ventura, Wentz, Wertsbaugher, Whipple, and Wood—32."

The following is a copy, on the same point and vote, of the original written Journal of the Assembly, deposited in the office of the secretary of State, showing the last action of the House on Senate bill No. 475:

61 *California Legislative Assembly, Twenty-fourth Session.*

ASSEMBLY CHAMBER, FRIDAY, *March* 4, 1881.

Consideration of Senate amendments to Assembly bill No. 475 resumed.

The question recurred on concurring therewith.

The ayes and noes were demanded by Messrs. Paulk, Sargent, and Wentz. Roll called. The House concurred in Senate amendments by the following vote:

Ayes: Arick, Baker of Sacramento, Birney, Bost, Brown, Burns, Crank, Daggett, Estee, Edwards, Felton, Garrity, Gavigan, Geary, Gilmore, Hartson, Hoitt, Holden, Howard, Keating, Kellogg, Lane, Mason, May, McCallion, McClure, McDonald, Mein, Noonan, O'Connor, Patterson of San Joaquin, Pinder, Reddy, Streeter, Swift, Van Fleet, Warkins, Wasson of Mono, Young, and Mr. Speaker—39.

Noes: Alviso, Baker of Yolo, Branch, Chandler, Coleman, Cunningham, Del Valle, Fraser, Gay, Griffith, Hale, Hendrick, Henshaw, Jones, Leach, Leake, Lewis, Long, Matthews of San Benito, McMurray, Murphy, Patterson of Nevada, Paulk, Platt, Reynolds, Samuels, Sargent, Siebe, Wentz, Wasson of Ventura, Wertsbaugher, Whipple, and Wood—32.

Matthews of Tehema and Kilburn paired, Kilburn voting aye and Matthews no. Messrs. Cameron and Crumpton paired; Cameron aye, Crumpton no.

The following facts also appear from the Journal:

Other business having intervened, "the consideration of Senate amendments to Assembly bill No. 475 resumed, the speaker declaring that this was not the final action on the bill, and that the House had concurred in Senate amendments to Assembly bill No. 475, by a vote of 39 ayes to 32 noes. Mr. Paulk appealed from the decision of the chair on the ground that forty-one votes were required for concurrence. The question recurred, shall the decision of the chair stand as the judgment of the House?"

After other business, on motion, the appeal was laid on the table by a vote of 38 ayes to 23 nays.

Mr. Hale then entered his protest against the decision of the Speaker, on the ground that forty-one members voting in the affirmative are necessary to adopt the amendments, the vote on concurring in the amendments being the only action of the House thereon. Thereupon again: "The Speaker stated that the action on the Senate amendments to the bill was not the final action on the bill, and consequently a concurrence or non-concurrence in the amendments required a majority vote only."

Mr. Griffith and Mr. Kellogg then each entered his protest against

the decision of the Speaker, declaring the Senate amendments concurred in on the ground that a concurrence required a majority of the whole House.

No other vote was had, or other announcement by the Speaker made in regard to this bill. No other action was had by the House except that on March 4, being the last act before adjournment *sine die*, the bill was reported as correctly enrolled, and as having been presented to the Governor for approval. No action was taken on this report, and the bill does not appear to have been reported to the House as having been approved.

62 XXV.

Mortgaged lands, mode and manner of assessment—payment of taxes.

The lands mentioned in the finding XXIII are not, and never have been, in any way used in connection with the railroad business of the defendant, but are agricultural, grazing, and other lands, granted to said defendant under the acts of Congress hereinbefore mentioned for the purpose in said acts provided, and so far as patented are distributed in the respective counties in the following quantities: In Santa Clara county, 3,138 acres; San Benito county, 1,879 acres; Monterey county, 1,879 acres; Stanislaus county, 32,242 acres; Merced county, 20,655 acres; Fresno county, 18,789 acres; Tulare county, 260,315 acres; Kern county, 168,096 acres; Los Angeles county, 38,033 acres; San Bernardino county, 30,686 acres; San Diego county, 5,737 acres.

Said patented lands, and all of them, for each of the years 1880, 1881, and 1882, were assessed, including those situated in the county of Fresno, by the assessors of the respective counties in which they are situated, at their full cash values, and no deduction from said value was made or allowed on account of said mortgage or the indebtedness secured thereby; on the contrary, the laws of the State of California under which said assessors acted in making their assessments prohibited any deduction from said values on account either of the mortgage or the indebtedness secured thereby.

In each of said years 1880, 1881, and 1882 the defendant paid in full, at the time the same became payable, all the taxes levied upon said lands for State, county, and municipal purposes, without any deduction on account of said mortgage.

XXVI.

The whole of said property assessed by the State board to the defendant.

The State Board of Equalization in assessing said value of said property to and against defendant assessed the full cash value of said railroad, roadway, road-bed, rails, rolling-stock, and franchises, without deducting therefrom the value of the mortgage or any part thereof, given and existing thereon as aforesaid, to secure the indebtedness of said company to the holders of said bonds, notwith-

standing they had full knowledge of the existence of the said mortgage; and in making said assessment the said State Board of Equalization did not consider or treat said mortgage as an interest in said property, but assessed the whole value thereof to the defendant in the same manner as if there had been no mortgage thereon.

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XXVII.

Other corporations of various kinds.

At, before, and ever since the adoption of the constitution of California, now in force, there were, and are, existing under the laws of said State, corporations of various kinds, formed for the purpose and actually operating and doing business, and holding and using property in more than one county in said State. Corporations in the said State of California now are, and ever have been, formed under general laws relating thereto, and there have ever existed corporations formed under its said laws for fire, marine, mutual life, health, and accident insurance; building ferries, constructing and operating roads, railroads, wagon-roads, telegraphs, bridges, wharves, chutes, and piers, and for constructing and operating canals, for the purpose of acquiring lands in large tracts and distributing them as homesteads among the corporators for savings and loans, for mining, for the sale and distribution of water in the cities and towns for manufacturing, mechanical, and agricultural purposes; for benevolent, charitable, and educational purposes, cemeteries, agricultural fairs, and various other purposes.

There is now, and for more than three years last past has been, a railroad in use and operation, extending from the city of Marysville, in the county of Yuba, to the town of Oroville, in the county of Butte, in said State, a distance of 26½ miles, which said road now is, and ever has been, operated in more than one county in this State, and has the same gauge as the road of this defendant, and has ever been operated in like manner and for like uses and purposes, and is now, and for more than two and a half years last past has been, in the ownership and under the operation and control of one N. D. Rideout, a natural person and citizen of the United States, and resident of the State of California.

XXVIII.

Rules of equality as regards the system adopted by said board.

The State Board of Equalization, in making the supposed assessment of said roadway of defendant, did knowingly and designedly include in the valuation of said roadway the value of fences erected upon the line between said roadway and the land of coterminous proprietors. Said fences were valued at $300 per mile.

XXIX.

The Legislature of the State of California, on the 27th day of March, A. D. 1862, passed an act entitled "An act to provide for the

construction of a railroad from Mokelumne City to Wood-
64 bridge, in the county of San Joaquin," which act is found in the statutes of California for 1862, at page 97, and is hereby made a part of this finding.

On the 29th day of March, A. D. 1878, the Legislature of the State of California passed an act entitled "An act to provide for the construction of a railroad from the town of Truckee, Nevada county, to Tahoe City, Lake Bigler, in Placer county, and to regulate fares and freights thereon," which act is found in the statutes of California for 1877–'8, at page 698 *et seq.*, and is hereby made a part of this finding.

At the same session said Legislature passed another act, on the 30th day of March, A. D. 1878, entitled "An act to provide for the construction of a railroad from Ione, in the county of Amador, to a point in or near the towns of Sutter Creek or Jackson, in said county, and to regulate fares and freights thereon," which act is found in the same volume of said statutes of California, at page 841 *et seq.*, and is hereby referred to and made a part of this finding.

Numerous other acts of a similar character are found scattered through the annual volumes of the statutes of California. It does not appear from the evidence whether said acts have been acted upon by the grantees therein named or not.

XXX.

The California Northern Railway is a railway having the standard gauge of four feet eight inches and a half—being the same gauge as that of the Southern Pacific Railroad of California—extending from Marysville, in Yuba county, to Oroville, in Butte county, a distance of twenty-six and one-half miles, twelve and one-half miles being in Yuba and fourteen in Butte county, built and formerly owned and operated by the California Northern Railway Company, a corporation organized under the laws of California. On the 30th day of July, A. D. 1881, the said railway was sold under a decree of foreclosure of mortgage upon said road, and at said sale purchased by N. D. Rideout, a natural person, who received a conveyance thereof in pursuance of said sale, went into possession thereof, and has ever since—being about two years and a half—possessed and operated, and he is now possessed of and operating said railway, claiming to be the owner thereof under said decree of foreclosure and sale, and since said sale said railway has been assessed—or purported to be assessed—to, and the taxes claimed to have been levied thereon have been paid by, said Rideout.

XXXI.

The roadway occupied by the defendant varies in width from thirty feet to two hundred feet on the Southern division, which division embraces the portion of said railroad situate in the county of Fresno, and is a little over seventeen miles in length.

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XXXII.

That the Southern division of said Southern Pacific railroad is operated by said corporation as a separate railway. It has no physical connection with the Northern division thereof by any constructed road forming a part of said road. It is separated therefrom by the Coast Range of mountains. The nearest point at which the railway of the Northern division approaches that of the Southern is over eighty miles. No passengers or freight are carried from one division to the other, except upon the section of the Central Pacific railroad which connects the two divisions by way of Lathrop and Niles and San Francisco, a division of two hundred and fifty miles in length. The corporation requested the board of equalization to assess each division of said railway separately. In pursuance of said request said board did so.

The Southern division of the Southern Pacific railroad runs through the counties of Fresno, Tulare, Kern, Los Angeles, San Bernardino, and San Diego.

Neither said tax nor any part thereof has been paid.

XXXIII.

There was no testimony or facts in the case other than as appears in these findings to countervail the effect or legal operation of any of the documents stated in these findings.

XXXIV.

The defendant, by its agent, appeared before the Board of Equalization, both before and after said assessment was made by said board, and asked to have the said assessment reduced, but after having been heard the board refused to reduce said assessment. The ground of refusal does not appear, the defendant having offered to show the ground of refusal by the testimony of one of the members of said board, and said testimony having been excluded as incompetent by the court upon the objection of plaintiff.

Conclusions of law.

From the foregoing facts the court finds, as a conclusion of law, that the defendants are entitled to judgment in their favor, with costs.

(Signed) FIELD, *Circuit Justice.*
(Signed) SAWYER, *Circuit Judge.*

January 21, 1884.

Endorsed: Filed January 22, 1884. L. S. B. Sawyer, clerk.

66 *Judgment.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY. } No. 2846.

This cause having come on regularly for trial on the 31st day of July, 1883, being a day in the July, 1883, term of said court, before the court sitting without a jury, a trial by jury having been waived by stipulation of the attorneys for the respective parties duly filed with the clerk of said court, Hon. E. C. Marshall, attorney general of the State of California, appearing as attorney, and A. L. Rhodes and D. S. Terry, Esqs., as counsel for plaintiff,
67 and H. S. Brown and T. J. Bergin, Esqs., as counsel for defendant, and the trial having been proceeded with on the 1st, 2d, 3d, 7th, 8th, 9th, 10th, 14th, and 15th days of August, of said term and year, and witnesses on the part of the plaintiff and of defendant having been sworn and examined, and documentary evidence on behalf of the respective parties having been introduced, and the evidence being closed, the cause, after argument of counsel having been submitted to the court for consideration and decision, and the court, after due deliberation, having filed its finding and ordered that judgment be entered in accordance therewith: Now, therefore, by virtue of the law and the finding aforesaid, it is considered by the court that The People of the State of California, plaintiff, take nothing by this action; that The Southern Pacific Railroad Company, defendant, go hereof without day, and that the said
68 defendant recover from said plaintiff its costs in this behalf expended, taxed at ——.

Judgment entered January 22d, 1884.

L. S. B. SAWYER, *Clerk.*

I hereby certify that the foregoing is a full, true, and correct copy of an original judgment entered in the above-entitled cause.

Attest my hand and the seal of said circuit court, this 22d day of January, A. D. 1884.

L. S. B. SAWYER, *Clerk.*

Endorsed: Filed January 22, 1884. L. S. B. Sawyer, clerk.

69 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY. } No. 2846.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United

States, of the ninth judicial circuit, within and for the district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the therein-entitled action.

Witness my hand and the seal of said circuit court, this 22d day of January, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By F. D. MONCTON,
Deputy Clerk.

70 Endorsed: Judgment roll. Filed 22 January, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

71 *Order Striking out Portions of Amended Answer.*

At a stated term, to wit, the July term, A. D. 1883, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room, in the city and county of San Francisco, on Thursday, the 19th day of July, in the year of our Lord one thousand eight hundred and eighty-three.

Present: The Honorable Stephen J. Field, associate justice of the Supreme Court of the United States; the Honorable Lorenzo Sawyer, circuit judge.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY. } No. 2846.

The motion heretofore argued and submitted to strike out portions of the amended answer herein having been duly considered, it is ordered that so much of the said answer as is contained in articles numbered 22, 34, 35, 36, 37, and 39, and that portion of article 15
contained on the printed slip, being the last paragraph of the
72 article, and the third paragraph of article 26, and all of article 28 after the first two paragraphs, be stricken out, as being matters of evidence, or immaterial matter; in other particulars the motion is denied.

To this order the defendant excepts, and to the refusal of the court to strike out other matter the plaintiff excepts.

(Here follow opinions of Mr. Justice Field and Judge Sawyer, omitted in printing this record, per stipulation of counsel.)

☞For opinions see record in the case of The People *vs.* The Central Pacific R. R. Co.

167 *Bond on Writ of Error.*

In the Supreme Court of the United States.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff in Error,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant in Error. } No. 2846.

Know all men by these presents, that we, Michael Scholl and Louis

Marshall, are held and firmly bound unto The Southern Pacific Railroad Company, defendant in error herein, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said The Southern Pacific Railroad Company, its successors or assigns; to the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our
168 and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals; dated the 7th day of July, 1884.

Whereas the above-named The People of the State of California has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by the circuit court of the United States of America for the district of California, in the cause entitled The People of the State of California *versus* The Southern Pacific Railroad Company, No. 2846:

Now, therefore, the condition of the obligation is such that if the above-named The People of the State of California, plaintiff in error, shall prosecute its said writ of error to effect, and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise, to remain in full force and virtue.

169 MICHAEL SCHOLL. [SEAL.]
LOUIS MARSHALL. [SEAL.]

Signed, sealed, and delivered in presence of—
L. S. B. SAWYER.

UNITED STATES OF AMERICA, *District of California*, } ss:

Michael Scholl and Louis Marshall, being duly sworn, each for himself deposes and says: That he is a householder in said district, and is worth the sum of five hundred dollars in lawful money of the United States of America, exclusive of property exempt from execution and over and above all debts and liabilities.

MICHAEL SCHOLL. [SEAL.]
LOUIS MARSHALL. [SEAL.]

Subscribed and sworn to before me, this 7th day of July, 1884.
L. S. B. SAWYER,
Com'r U. S. Circuit Court, Dist. Cal.

170 Endorsed: The form of the within bond and the sufficiency of the sureties thereon are hereby approved. (Signed) Lorenzo Sawyer, U. S. circuit judge, 9th circuit. Filed July 7th, 1884. L. S. B. Sawyer, clerk.

171 In the Circuit Court of the United States for the District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, } No. 2846.

I, L. S. B. Sawyer, clerk of the circuit court of the United States, of the ninth judicial circuit, in and for the district of California, do hereby certify that the foregoing one hundred seventy written and printed pages, numbered from 1 to 170, inclusive, are a full, true, and correct copy of the record and of all proceedings in the above-entitled cause, and that the same together constitute the return to the annexed writ of error.

172 Witness my hand and the seal of said circuit court, this 22d day of July, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk.*

173 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States, of the ninth judicial circuit, in and for the district of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between The People of the State of California plaintiff in error, and The Southern Pacific Railroad Company, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 7th day of July, in the year of our Lord one thousand eight hundred and eighty four, and of the Independence of the United States the one hundred and ninth.

[SEAL.] L. S. B. SAWYER, *Clerk.*

The above writ of error is hereby allowed.

LORENZO SAWYER,
Circuit Judge.

174 *The Answer of the Judges of the Circuit Court of the United States for the District of California.*

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify, under the seal of our said court, to the Supreme Court of the United States, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

By the court:

[SEAL.] L. S. B. SAWYER, *Clerk.*

[Endorsed:] No. 2846. United States Supreme Court. The People of the State of Calfornia, pl'ff in error, *vs.* The Southern Pacific Railroad Company, def't in error. Writ of error. Filed 10 July, 1884. L. S. B. Sawyer, clerk.

175 UNITED STATES OF AMERICA, *ss:*

To the Southern Pacific Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington, in the District of Columbia, on the second Monday of October, A. D. 1884, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States in and for the district of California, wherein The People of the State of California is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the circuit court of the United States for the district of California, this 7th day of July, 1884, and of the Independence of the United States the 109th.

[SEAL.] LORENZO SAWYER,
Circuit Judge.

176 [Endorsed:] No. 2846. United States Supreme Court. The People of the State of California, pl'ff in error, *vs.* The Southern Pacific Railroad Company, def't in error. Citation. Service of a copy of the within citation is hereby acknowledged. July 9, 1884. H. S. Brown, att'y for def't in error. Filed 10 July, 1884. L. S. B. Sawyer, clerk.

Endorsed on cover: California C. C. U. S. No. 985. The People of the State of California, plaintiff in error, *vs.* The Southern Pacific Railroad Company. Filed 3d October, 1884.